

R-06-0887  
12-19-06



AGREEMENT BETWEEN  
THE  
COUNTY OF ESSEX, SHERIFF OF ESSEX COUNTY  
AND THE  
ESSEX COUNTY SHERIFF'S OFFICERS  
NEW JERSEY STATE POLICEMEN'S  
BENEVOLENT ASSOCIATION, LOCAL NO. 183

JANUARY 1, 2002 THROUGH DECEMBER 31, 2005

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THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
between the COUNTY OF ESSEX ("County") and the Sheriff of Essex County  
("Sheriff"), with offices at the Hall of Records, Newark, New Jersey, and the NEW  
JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL 183,  
hereinafter referred to as the PBA or Local 183.

**WITNESSETH:**

WHEREAS, the Public Employment Relations Commission has certified New Jersey State Policemen's Benevolent Association, Local 183, as the exclusive representative for the purpose of collective negotiations with respect to wages, hours, terms and other conditions of employment for all permanently appointed Sheriff's Officers, Court Attendants, Identification Officers, Sheriff's Officers, (Bilingual) and Sheriff's Investigator;

NOW THEREFORE, the County and the Sheriff and the PBA mutually agree as follows:

ARTICLE I

PURPOSE

The purpose of this Agreement is to memorialize and to set forth the terms and conditions of employment to be observed between the parties hereto in order to foster good Employer-Employee relations.

ARTICLE II  
RECOGNITION

The County recognizes New Jersey State Policemen's Benevolent Association, Local 183, as the exclusive representative of all Sheriff's Officers, Court Attendants, Identification Officers, Sheriff's Officers (Bilingual), and Sheriffs Investigator employed by the County for all purposes under and pursuant to the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq.) as amended. As used herein, the terms "Sheriff's Officer" or "Employee" shall include all Employees, who are recognized as being represented by the PBA pursuant to this Article. The said New Jersey State Policemen's Benevolent Association, Local 183, shall serve as the exclusive representative for the purpose of collective negotiations as aforesaid for all such employees during the term of this Agreement.

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ARTICLE III  
RETENTION OF EXISTING BENEFITS

Section 1. Except as otherwise provided herein, all rights, privileges and benefits which Employees have heretofore enjoyed and are presently enjoying shall be maintained and continued by the County during the term of this Agreement. The personnel policies and personnel regulations currently in effect shall continue to be applicable to all Employees except as otherwise expressly provided herein.

Section 2. The County agrees that it shall not discriminate against any Sheriff's Officer with respect to hours, wages or any terms or conditions of employment by reason of his membership in New Jersey State Policemen's Benevolent Association, Local 183, and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the County or his institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms and conditions of employment.

## ARTICLE IV

### SALARIES

Section 1. The salary schedule for the term of this Agreement for all Employees hired after 02/01/97 shall be as follows:

	01/01/02	07/01/02	07/01/03	04/01/04	01/01/05
Start	\$33,183	\$33,344	\$35,546	\$36,968	\$38,447
Step 1	\$37,527	\$38,840	\$40,200	\$41,808	\$43,480
Step 2	\$41,869	\$43,334	\$44,851	\$46,645	\$48,511
Step 3	\$46,213	\$47,830	\$49,505	\$51,485	\$53,544
Step 4	\$50,558	\$52,328	\$54,159	\$56,325	\$58,578
Step 5	\$54,899	\$56,820	\$58,809	\$61,162	\$63,608
Step 6	\$59,240	\$61,313	\$63,459	\$65,998	\$68,637

Section 2. Employees hired prior to 02/01/97 shall move to the next higher step on each anniversary date, except that for just cause a step (either a full step or half step) may be withheld on not more than two (2) anniversary dates. Each Employee shall thus achieve maximum salary in not more than seven (7) years. The denial of a step by the Sheriff shall be for just cause only. The same terms as set forth herein shall apply to Employees hired after 02/01/97 except that each such Employee shall achieve

maximum in not more than eight (8) years.

Section 3. All Employees hired after the date of this Agreement shall receive a salary equal to the starting salary or one of the steps set forth above.

Section 4. The night shift differential for the 12:00 midnight to 8:00 am shift and the 4:00 pm to midnight shift shall be 20.5 cents per hour.

ARTICLE V  
UNIFORM AND SAFETY ALLOWANCE

Section 1. Each Employee shall receive a uniform allowance of Five Hundred Fifty (\$550.00) Dollars per *annum*; Two Hundred Seventy-Five (\$275.00) Dollars shall be paid on or about May 1 and Two Hundred Seventy-Five (\$275.00) Dollars shall be paid on or about November 1 of each year. Uniforms shall be purchased and maintained by the Employees in accordance with standards established by the Sheriff. The uniforms are to be standard but may be purchased by the Employee from any source.

If the Sheriff directs that an additional item be added to the existing uniform as it now stands, the County shall be required to pay for the initial cost of such item.

Section 2. Each Employee shall receive a safety allowance of One Hundred Fifty (\$150.00) Dollars per *annum*; Seventy-Five (\$75.00) Dollars shall be paid on or about May 1 and Seventy-Five (\$75.00) Dollars shall be paid on or about November 1 of each year.

## ARTICLE VI

### OVERTIME

Section 1. Overtime at the rate of time and one-half shall be paid whenever any Employee works more than eight (8) hours per day, the eight (8) hours including lunch, or forty (40) hours per week of credited time. In the event that an Employee has exhausted his credited leave time, he shall not be paid overtime until he has worked forty (40) hours of credited time during the scheduled forty (40) hour work week. Any stipend heretofore provided for overtime work shall not be continued after the changeover to the eight (8) hour workday on January 1, 1985.

Section 2. The normal workday for all personnel shall be eight (8) hours a day inclusive of the one hour lunch period, and the normal workweek shall be forty (40) hours per week. Only overtime which is approved and verified by a supervisor will be paid.

Section 3. Any Employee who works a weekend assignment shall receive one day off in the following week plus one-half day's pay for each day worked, or time and one-half in pay for each day worked, at the discretion of the Sheriff.

Section 4. Overtime pay shall be paid no later than the second pay day of the month following the submission of the voucher for the overtime worked.

Section 5. Extraditions:

(a) Whenever an Employee is required to go on an overnight extradition trip, he shall be paid four (4) hours per day at the rate of time and one-half, in addition to

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his normal day's pay. If an Employee is sent out on a weekend night on an extraction, he shall be guaranteed eight (8) hours pay at time and one-half for each night that he is away.

(b) In the event an Employee returns from an extradition trip after normal working hours, he shall receive time and one-half for each hour after the normal working day (8:30 am to 4:30 pm), but for not more than four (4) hours.

Section 6. Overtime shall be paid in cash or compensatory time at the rate of time and one-half in accordance with the following procedure:

Except as set forth above, the employee shall have the option as to whether overtime shall be paid in cash or compensatory time and shall notify his/her commanding officer in writing of the decision at the completion of such overtime and shall indicate same on the overtime report upon submission.

However, an employee may accumulate no more than eighty (80) hours to be banked as compensatory time.

For all overtime hours in excess of eighty (80) hours of compensatory time, the employee shall receive only paid overtime compensation.

Any compensatory time not utilized by the employee during the calendar year in which it is earned shall be paid to him/her pursuant to the paid overtime compensation provision of this agreement.

ARTICLE VII  
AUTOMOBILE ALLOWANCE

Section 1. Officers assigned to the Administrative Division, Civil Process Division, Detective Division (exclusive of the Bureau of Criminal Identification) and any other permanent Plain Clothes assignment shall make available, as a condition of continued assignment, a personal vehicle in proper working order in connection with their employment, as per past practice. It shall be required that this car be used for in and out of county travel.

Section 2. A monthly stipend in the sum of Two Hundred (\$200.00) Dollars per month shall be paid to the Officers for the purpose of defraying the costs of fuel, insurance, repairs and depreciation of the vehicle. There shall be no requirement that the monthly stipend be based upon actual mileage traveled.

Section 3. All personnel not covered by Section 1 of this Article who are required by the Sheriff to use their personal vehicle in connection with their employment shall receive Ten (\$10.00) Dollars a day for each day of use, to a maximum of Two Hundred (\$200.00) Dollars per month.

Section 4. Pursuant to County regulation and statute, the Officer is required to submit a voucher on a monthly basis, but the voucher does not have to specify mileage.

Section 5. Employees may be required to properly install such equipment as may be necessary, supplied by the County, and installed at County expense.

Section 6. In the event an Officer works less than fifteen (15) days in any month, the payment shall be reduced by Ten (\$10.00) Dollars for each working day less than fifteen (15).

Section 7. In addition to the stipend set forth in Section 3 above, the mileage allowance of out of county travel shall be Sixteen (\$.16) Cents per mile. Employees shall submit vouchers for reimbursement for out-of-county travel.

Section 8. There shall be no retroactive payments due to any change in the submission procedure resulting from the implementation of this Article. The new submission procedure shall become effective on the first day of the month following the signing of the Agreement by all signatories.

## ARTICLE VIII

### HOLIDAYS

Section 1. The days listed in Schedule A shall be recognized as paid holidays.

Section 2. When a holiday is celebrated on a Sunday, the following Monday shall be considered the holiday. When a holiday is celebrated on Saturday, the prior Friday shall be considered the holiday.

Section 3. Employees shall be paid at straight time base rates for listed holidays exclusive of any other differentials or payments based on his regularly scheduled work day.

Section 4. It is expressly understood that the County may require any Employee to work on any holiday in the event the nature of the work so requires.

Section 5. An Employee on leave of absence without pay shall not be entitled to pay for any holiday occurring during such leave. Any Employee on leave of absence with pay shall not be entitled to additional pay for any holiday occurring during such leave.

Section 6. In the event an Employee covered by this Agreement is required to work on a legal holiday or a day declared to be a holiday by the Board of Chosen Freeholders of the County of Essex, the President, Congress or the Governor, the Employee shall be paid an extra day's pay for each holiday worked. Payments shall be made within thirty (30) days of the holiday worked.

ARTICLE IX  
VACATIONS

Section 1. Employees shall be granted vacation leave with pay subject to approval of the Sheriff as follows:

- (a) During the first twelve (12) months of employment, one (1) working day's vacation for each month completed.
- (b) During the second (2<sup>nd</sup>) through fifth (5<sup>th</sup>) years of employment, twelve (12) working days.
- (c) During the sixth (6<sup>th</sup>) through fifteenth (15<sup>th</sup>) years of employment, fifteen (15) working days
- (d) During the sixteenth (16<sup>th</sup>) through twentieth (20<sup>th</sup>) year of employment, twenty (20) working days
- (e) During the twenty-first (21<sup>st</sup>) year and thereafter, twenty-five (25) working days.

Section 2. Upon celebrating the fifth (5<sup>th</sup>); fifteenth (15<sup>th</sup>) and twentieth (20<sup>th</sup>) years of service, an Employee shall be granted the additional vacation during the calendar year in which the Employee celebrates that anniversary.

Section 3. In scheduling requested vacation period, seniority shall prevail as per past practice. The scheduling of any vacation request is subject to the approval of the Sheriff.

Section 4. Vacation time must be utilized in the year in which it is earned except in the event the Employee's request is refused by reason of the manpower needs of the Agency. In the latter event, vacation time may not be accrued beyond the next calendar year. However, Employees with more than five (5) years of continuous service may

carry over one (1) year's vacation or part thereof on condition that all vacation leave is utilized in the succeeding year. This shall not prevent Employees from continuing the practice of year-end vacations.

Section 5. Part-time and seasonal Employees are not eligible for any vacation benefits.

Section 6. Holidays falling within a scheduled vacation period shall not be lost by the Employee and may be taken at a later time subject to the advance approval of the Sheriff.

Section 7. In the event of the death or normal retirement of any Employee covered by this Agreement, there shall be no proration of vacation in the year in which that event occurs and the Employee or his estate shall be paid the number of remaining unused vacation days for which the Employee is eligible times the Employee's daily rate of pay in effect at the time the vacation was earned.

Section 8. If any Employee resigns and has more than fifteen (15) years of service and is eligible for retirement pursuant to the requirements of his pension program, then, and in that event, he shall be paid the full amount of unused vacation time due and owed him in that calendar year without proration.

Section 9. An Employee celebrating the fifth, fifteenth and twentieth anniversary will be granted the additional vacation during the year in which he reached the anniversary date.

## ARTICLE X

### HOSPITALIZATION, MEDICAL SURGICAL AND MAJOR MEDICAL INSURANCE

Section 1. Hospitalization and Medical-Surgical (Blue Cross and Blue Shield) and Major Medical Insurance shall be paid for by the County except as set forth below. The insurance and premium payment therefore shall cover the Employee, his/her spouse and any dependent members of his/her family, under the age of twenty-three (23) years, living at the Employee's home, except as set forth below. The County reserves the right to select the insurance carrier who shall provide such benefits, as long as the benefits are not less than those provided by the County on December 31, 1979. The County of Essex shall have the right to maintain the following:

- (a) Pre-Admission Review, as set forth in Schedule B, attached hereto and made a part hereof;
- (b) Second Surgical Opinions, as set forth in Schedule B;
- (c) Twenty (20%) Percent Co-Pay for Dependent Coverage only:

(1) This coverage will apply to "New Hires Only". For the purpose of this provision "New Hires" shall be defined as Employees hired after June 16, 1993. All Sheriff's Officers, Sheriffs Investigators, Identification Officers, Court Attendants and Sheriff's Provisional Officers working for the County on or before June 16, 1993 will be considered "vested" in the current health care coverage and will not be required to pay a twenty (20%) percent co-pay for dependant coverage even if any one is laid off after the signing of the contract and then rehired by the County (Schedule C).

(2) The twenty (20%) percent co-pay will be capped at the applicable 1993 rate (for Employee/child, Employee/spouse, and family). The Certification of 1993 rates supplied by the County shall remain in effect during the term of this Agreement.

Section 2. A prepaid Drug Prescription Plan paid for by the County shall be continued in effect. The County reserves the right to select the insurance carrier who shall provide such benefits. The County of Essex shall have the right to maintain the following:

- (a) One (\$1.00) Dollar co-pay for generic drugs;
- (b) Five (5.00) Dollars co-pay for non-generic drugs
- (c) The prescription co-pays shall be increased to Ten (\$10.00) Dollars for generic drugs and Fifteen (\$15.00) Dollars for name brand drugs to be effective March 16, 2005. The mail order prescription plan shall be continued.

Section 3. Upon retirement, an Employee who is a member of the Essex County Employee Retirement System may continue his New Jersey Blue Cross/Blue Shield insurance, or its successor's insurance, and Four Thousand (\$4,000.00) Dollars life insurance by paying group rate premiums therefore.

Section 4. The County will provide health benefits as described in Section 1 below to Employees who retire and fulfill all the requirements and criteria of Section 2 below. In consideration of providing this benefit the parties agree that the Six Hundred (\$600.00) Dollars annual payment to qualifying retirees effective as of January 1, 1988 and previously set forth in Section 6 of this Article is hereby eliminated.

Section 1. (a) The coverage outlined in this provision is for the eligible retiree and his/her dependents as defined in the Plan documents governing this benefit and subject to any conditions and stipulations set forth herein. Upon the death of the retiree, all coverage pursuant to this provision shall be terminated at the end of the calendar month in which the covered retired Employee died.

(b) All coverage provided pursuant to this provision shall be limited to the County Point of Service Plan or the County offered Health Maintenance Organization (HMOs). The County reserves the right to amend or change this coverage and the Plan to any extent necessary, including changing the service provider, provided the level of coverage provided to retirees will be at the same level as contained in the current Plan document on the date this Agreement is signed.

(c) The County will provide Prescription Drug Plan benefits to eligible retirees at the same level as provided to active Employees.

(d) At such time as the eligible retiree becomes Medicare eligible, the eligible retirees will assume the cost of any Medicare coverage. It is expressly understood that the County will only provide supplemental coverage to Medicare.

Section 2 In order to be eligible for the health benefits described in paragraph 1 of this Article, the Employee who retires must:

(a) Have twenty-five (25) years or more of service credit in any of the following: the State Public Employment Retirement System of New Jersey (PERS); the Essex County Employment Retirement System (ERS); the Police and Fire Retirement System of New Jersey (PFRS); or the consolidated Police and Firemen's Pension Fund (CPFPF); and

(b) Be actively employed with the County of Essex on the date this provision was made part of the Agreement; and

- (c) Have a total of ten (10) years of employment service with the County of Essex prior to his/her retirement; and
- (d) Have been an Employee of the County of Essex immediately prior to his/her retirement; and
- (e) Not elect a vested and deferred retirement; and
- (f) Not elect or take a disability retirement with less than twenty-five (25) years of service credit in PERS, ERS, PFPS, or CPFPP; and
- (g) Not receive payments or stipends of any kind for premiums, charges or the like for retiree medical benefits from any Employer; and
- (h) Not receive health benefits coverage from a source other than Essex County; and
- (i) Not be eligible to receive health benefits coverage from a source other than Essex County; and
- (j) Not be an active Employee who is eligible for retiree health benefits initially provided by a non-County operated predecessor to a current Essex County agency, for example, the Essex County Welfare Board; and
- (k) Not be a retired Employee of a non-County operated predecessor to a current Essex County agency, for example, the Essex County Welfare Board, who is currently receiving health benefits from that predecessor agency.

Notwithstanding the requirements set forth in Section 1 above, and subject to all

remaining terms, conditions and eligibility requirements contained in paragraph Section 2, Employees who elected retirement between January 1, 1998 and the date this provision was made part of the Agreement shall be eligible for coverage outlined in this provision, provided that the first date of retirement occurred between January 1, 1998 and the date this provision was made part of the Agreement.

In the event that a retiree ceases to be eligible for, or to receive, health benefits from an Employer or source other than Essex County and he/she then meets all the requirements of Section 2, he/she shall be entitled to the benefits described in Section 1 of this provision.

Section 4. The County may change insurance carriers or become self-insured, so long as it does not reduce existing benefits.

Section 5. In the event that any other Essex County employee organization shall receive a dental insurance program, either voluntarily or by arbitration award, this Agreement may be re-opened for further negotiations concerning this benefit upon request of the PBA.

ARTICLE XI  
GRIEVANCE PROCEDURE

**A. Purpose**

1. The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may arise affecting the terms and conditions of employment. The parties agree that this procedure will be kept as informal as may be appropriate.

**B. Definitions**

The term "grievance" shall mean an allegation by the PBA that there has been:

1. A misinterpretation, misapplication or violation of the terms of this Agreement which is subject to the grievance procedure outlined herein and shall hereinafter be referred to as a "contract grievance" and shall include disciplinary action; or
2. Inequitable, improper, unjust application, misinterpretation or violations of rules or regulations, existing policy, or orders applicable to the Sheriff's Department, which shall be processed up to and including the Sheriff or his designee, and shall hereinafter be referred to as a "non-contractual grievance".

**C. Presentation of a Grievance**

The County agrees that in the presentation of a grievance there shall be no loss of pay for the time spent in presenting the grievance by the grievant and two (2) Union representatives who are Employees of the County at the appropriate step.

**D. Steps of the Grievance Procedure**

1. The following constitutes the sole and exclusive method for resolving grievances between the parties covered by this Agreement.

STEP 1

- (a) Grievance arising solely from actions taken by the County Executive shall be filed by the PBA with the County Administrator with a copy of the Sheriff.
- (b) Grievance arising solely from actions taken by the Sheriff or his staff shall be filed by the PBA with the Sheriff.
- (c) The grievance shall be filed in writing to the appropriate office with a copy of the grievance to the Labor Relations Office within thirty (30) calendar days of the occurrence of the grievance. Failure to act within said thirty (30) calendar days shall be deemed to constitute an abandonment of the grievance.
- (d) The appropriate official shall render a decision in writing within fifteen (15) calendar days after receipt of the grievance. Failure to respond within the said fifteen (15) days shall be deemed to be a denial of the grievance.

BINDING ARBITRATION

1. In the event the grievance is not resolved or no response is given within the time provided at Step 1, the grievance may be referred to binding arbitration only if each and every one of the following conditions is met.

- (a) The request for arbitration shall be filed in writing with the State Board of Mediation with copies to the County Executive and the Sheriff;
- (b) The PBA and only the PBA may file for arbitration;
- (c) The request for arbitration must be filed within twenty (20) calendar days of the response or time for response at Step 1;
- (d) The grievance is a contract grievance within the meaning of Section B.1 of this Article.

2. Nothing in this Agreement shall be construed as compelling the PBA to submit a grievance to arbitration or to represent an Employee before the Department of Personnel Merit Review Board. The PBA's decision to submit a grievance to arbitration or to terminate the grievance prior to submission to arbitration shall be final.

3. Where the grievance arises from facts which would permit the individual grievant to appeal to the Department of Personnel Merit Review Board, such appeal shall be the exclusive remedy and the arbitration procedure shall not be available.

3A. No Arbitration hearing shall be scheduled until such time as the time limits for appeal to the Department of Personnel Merit Review Board has expired, usually no later than twenty days from the date of the action complained of.

3B. Once the grievant makes the selection of procedure, such election shall be deemed final and binding and constitute an absolute waiver of the procedure not elected. The selection will be made in writing at the appropriate time on the grievance form.

4. The parties shall meet at least twenty (20) calendar days prior to the date of the arbitration hearing to attempt to frame the issues to be submitted to the Arbitrator and to stipulate the facts in an effort to expedite the hearing. The failure to have such a meeting shall not affect the scheduled date of the arbitration hearing.

5. The decision and award of the Arbitrator shall be in writing and shall be final and binding to the extent permitted by and in accordance with applicable law and this Agreement.

6. The Arbitrator shall not have the power to add to, subtract from, or modify the provisions of this Agreement, and shall confine his/her decision solely to the interpretation and application of this Agreement. He/she shall confine himself/herself to the precise issue submitted for arbitration.

7. The costs of the services and expenses of the Arbitrator shall be borne equally by the County and the PBA. Any other expenses incurred in connection with the arbitration shall be paid by the party incurring the same.

8. The hearing shall be conducted in accordance with the rules of the New Jersey State Board of Mediation.

9. The Arbitrator shall hold a hearing at a time and place convenient to the parties as expeditiously as possible after selection and shall issue the Opinion and Award within a reasonable period of time after the close of the hearing.

10. The filing of a grievance shall not stay any disciplinary action.

11. The parties may mutually agree in writing to extend any time limit at any step of this procedure.

12. The Union's failure to submit a grievance shall not constitute a waiver or estoppel as to the Union's right to grieve subsequent grievances.

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ARTICLE XII  
UNILATERAL CHANGES

There shall be no unilateral changes in the terms and conditions of employment of Employees covered by this Agreement without notice to and negotiations with the Association. However, the Employer shall not be required to make any concessions. Any dispute concerning any change in any term or condition of employment which cannot be settled by the parties shall not be cause for any job action, but the same shall be processed through the grievance procedure of this Agreement.

## ARTICLE XIII

### STANDBY TIME

Any Employee covered under this Agreement who is assigned to standby, i.e., to remain available and subject to call for duty while off duty, shall be compensated at the rate of two (2) hours pay per day straight time when so assigned on weekdays - Monday through Friday - and four (4) hours pay per day straight time when so assigned on Saturdays, Sundays or holidays. If actually called for duty, he/she shall be compensated at the rate of time and one-half (1½) for such time spent on duty.

## ARTICLE XIV

### SICK LEAVE

1. Sick time shall be defined as a required absence from work due to a personal illness, accident, exposure to contagious disease or required emergency attendance upon a member of the Employee's family who is seriously ill; or due to death in the immediate family which is not covered by bereavement leave (Article XXVI). Immediate family includes father, mother, stepfather, stepmother, husband, wife, child, foster child, sister, brother, mother-in-law or father-in-law. It shall also include relatives of the Employee residing in the Employee's household.
2. Sick time is not compensatory time or overtime. It can only be used for legitimate illnesses. Misuse of sick leave will lead to disciplinary action.
3. Full-time Employees shall earn sick time at the rate of 1.25 days per month of completed service or fifteen (15) days per year after the first twelve (12) months of employment. During the first twelve (12) months of employment, sick leave shall be earned at the rate of one (1) sick day per month or twelve (12) days. Unused sick leave shall accumulate without limitation.
4. Employees shall notify their immediate supervisor of absence due to illness at least fifteen (15) minutes prior to the Employee's starting time.
5. Employees absent for five (5) or more consecutive working days may be required by the Sheriff to present a medical certificate to their supervisor upon return to work. The certificate shall state the nature of the sickness, accident, or injury and shall

certify that the Employee is capable of performing his/her normal employment activities and that his/her return will not jeopardize the health of other Employees.

6. The Sheriff may request a medical certificate for absences of less than five (5) working days if he believes an Employee is abusing sick time.

7. Upon ordinary service retirement each Employee shall receive one (1) day's pay at the then prevailing rate for each five (5) days of accumulated unused sick leave not to exceed a total sum of forty-five (45) days' salary. This payment shall be made at the time of retirement and shall not be considered as part of the Employee's annual salary.

8. Pregnancy disability leave with or without pay shall be granted in accordance with applicable law.

ARTICLE XV  
PERSONAL LEAVE

1. Effective January 1 of each calendar year of this Agreement, each Employee shall be entitled to three (3) personal leave days per calendar year with pay.
2. Except in the event of personal emergency or permission from the Sheriff or his/her designee, the Employee shall submit a written request for such days off at least three (3) days prior to the requested leave.
3. Personal leave may be scheduled in units of one-half ( $\frac{1}{2}$ ) day or multiples thereof and may be taken in conjunction with other types of paid leave.
4. Such leave shall not accumulate. Unused balances in any year shall be cancelled, except where the Employee's requests for such days have been denied.
5. Requests for such leave may be granted provided there is no interference with the proper conduct of the government function involved.
6. Priority in granting such requests shall be (1) emergencies, (2) observation of religious or other days of celebration, but not holidays, (3) personal business and (4) other personal affairs.
7. Where, within a work unit, there are more requests than can be granted for use of this leave for one of the purposes above, the conflict will then be resolved on the basis of County seniority and the maximum number of such requests shall be granted in accordance with the provisions of Section 5.

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## ARTICLE XVI

### EXTENT OF COUNTY LIABILITY

Whenever an Employee covered by this Agreement is a Defendant in any action or legal proceeding arising out of or incidental to the performance of his/her duties, the County shall assume responsibility for, or defray the cost of, defending such action as set forth below.

#### Procedures

An Employee who feels he/she may be entitled to the protection granted hereunder shall notify the County Counsel, in writing, within one (1) week of receipt of the Summons or Complaint, or Indictment, or any other document indicating that a legal proceeding has been instituted against the Employee. Such notification must advise the County Counsel that the Employee has received these documents, that the Employee feels he/she is entitled to coverage pursuant to this Agreement, and must also include, as an attachment, a copy of the Summons and Complaint, or Indictment, together with any other documents received; plus a copy of any and all reports filed by the Employee concerning the incident underlying the legal proceeding. Failure of the Employee to comply with this requirement shall constitute a waiver on the part of the Employee of any claim against the County for reimbursement of the costs of defending the action.

The County Counsel shall review the documents provided by the Employee and determine if the Employee is entitled to coverage hereunder. If the County Counsel

determines that the Employee is entitled to coverage, the County Counsel will then determine if the County Counsel shall provide the defense of the proceeding or if the defense must be provided by private counsel. In the event County Counsel determines that the Employee is entitled to counsel pursuant to this Agreement, but the County Counsel is unable to provide the Employee with a defense to the legal proceeding, the Employee will be advised by the County Counsel to retain private counsel to represent him/her in the legal proceeding, such private counsel to be compensated according to the terms set forth below. In this circumstance, the Employee shall direct the private counsel selected to contact the County Counsel in order to make an agreement concerning the fee arrangement of the representation.

In the event the County Counsel determines either that the acts giving rise to the legal action do not entitle the Employee to private counsel or to have his/her expenses defrayed under this provision, or that the County does not have sufficient information to make this determination prior to termination of the legal proceeding, then, if the Employee wishes to preserve his/her right to later challenge such decision, or to apply for reimbursement, the Employee shall direct his/her attorney to contact the County Counsel in order to make an agreement concerning the terms of potential reimbursement. In no event shall private counsel be paid unless the County Counsel has agreed to a reimbursement rate for his/her services in writing prior to the performance of those services, and private counsel has agreed in writing to work according to the terms specified below.

Private attorneys employed pursuant to this provision will be paid either a lump

sum fee, as set forth below, or at a rate not to exceed Forty-Five (\$45.00) Dollars per hour of attorney time. In the event that an hourly rate is agreed to, the attorney shall keep accurate and complete records of the hours spent on the case (to include the date and nature of services performed with regard to all time) from the outset of the case, and shall submit an Affidavit of Services to the County Counsel at the conclusion of the case setting out the detailed time information. No payment will be made by the County unless this detailed Affidavit of Services is submitted: The County Counsel shall review this Affidavit and authorize payment if he/she determines that the requirements of this section have been met. The County Counsel may disapprove of any payment for any attorney hours which the County Counsel concludes are in excess of a reasonable number for the services which were rendered in the case.

In the alternative, if the Employee, his/her attorney and County Counsel agree that a reasonable fee can be established in advance, then the parties may enter into an agreement reflecting the lump sum to be reimbursed in the event that the County is deemed liable, the basis for said sum, and the records to be maintained by the attorney in connection with the case.

As a convenience to Employees, the County Counsel will make an effort to maintain a list ("pool") of private attorneys who are available to be retained by Employees at a rate of Forty-Five (\$45.00) Dollars per hour

ARTICLE XVII  
NON-DISCRIMINATION

1. The County and the PBA agree that the provisions of this Agreement shall be applied equally to all Employees, and there shall be no discrimination as to age, sex, marital status, race, color, creed, national origin or political affiliation.
2. The County agrees not to interfere with the right of Employees to become members of the PBA. There shall be no discrimination, interference, restraint, or coercion by the County or any of its representatives against any Employee covered by this Agreement because of PBA membership or non-membership in the PBA or because of any lawful activity by such Employee permissible under law or this Agreement on behalf of the PBA. The PBA, its members or agents, shall not discriminate against, interfere with, restrain or coerce any Employees covered under this Agreement who are not members of the PBA.
3. The PBA recognizes its responsibility as exclusive collective bargaining representative.

ARTICLE XVIII  
LOCAL 183 ACTIVITIES

The President of Local 183, or his designee, may process grievances of Local 183 while on working time.

ARTICLE XIX  
BULLETIN BOARD SPACE

1. Space for bulletin boards will be provided to the PBA only for posting of notices pertaining to PBA business to enable Employees of the bargaining unit to see notices posted thereon when reporting or leaving their work stations, or during their rest periods. All notices shall be posted by the President of the PBA or his designee and shall relate to matters listed below:

- (a) PBA recreational and/or social affairs;
- (b) PBA appointments;
- (c) PBA election;
- (d) Results of PBA elections;
- (e) PBA meetings;
- (f) Reports of PBA Committees; and
- (g) Any other material authorized by the County and the President of the PBA or his designee.

2. No material of a scurrilous or political nature will be posted.

ARTICLE XX  
EDUCATION BENEFITS

1. Employees covered by this Agreement shall be eligible for the same benefits for additional education credits received in accordance with the program established for Correction Officers. Such benefits shall be frozen at the current level of Three Thousand Three Hundred Thirty-One (\$3,331.00) Dollars per year for a full increment (for sixty (60) completed credits) and One Thousand Six Hundred Sixty-Five (\$1,665.00) Dollars per year for a half ( $\frac{1}{2}$ ) increment (for thirty (30) completed credits).

The current practice regarding payment procedure shall continue.

2. Bargaining unit Employees hired after May 1, 1988 shall not become eligible for the educational increment until one (1) year from date of hire or completion of formal police training, whichever shall first occur.

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ARTICLE XXI

LONGEVITY

1. Pursuant to the Resolution of the County dated July 25, 1974, the longevity increment program will be continued in effect for all permanent Employees on the payroll as of December 31, 1974, but will be discontinued for all Employees hired after December 31, 1974.
2. All longevity increments due on or after January 1, 1976, shall be calculated on the basis of the regular salary increment in effect on December 31, 1975, and shall not be thereafter modified.
3. Longevity increments will be paid as heretofore, namely, beginning with the pay period following the anniversary date of employment.

ARTICLE XXII  
FULLY BARGAINED PROVISIONS

1. This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues, which were the subject of negotiations.
2. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing only, executed by the PBA, the County Executive, the Board of Chosen Freeholders and the Sheriff.

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ARTICLE XXIII  
SAVINGS CLAUSE

Should any part of this Agreement or any provisions contained herein be declared invalid by operation of law or by any tribunal of competent jurisdiction, such invalidation of such part or provision shall not invalidate the remaining portions hereof and they shall remain in full force and effect.

ARTICLE XXIV  
FAIR SHARE REPRESENTATION FEE

1. The County will continue to deduct and pay the PBA the fair share representation fee, equal to maximum of eighty-five (85%) percent of dues and assessments, which shall be withheld in accordance with applicable law. Only the PBA as majority representative shall be entitled to deduction and payment of the fair share representation fee. The PBA shall indemnify the County from all liability resulting from and/or caused by dues deduction of fair share representation fee. The PBA will fully comply with the provisions of N.J.S.A. 34:13A-5.6.

2. The County will continue to defer one (1) week's pay through a payroll holdback system. The procedure for holdback will be consistent with that employed on a county-wide basis.

ARTICLE XXV  
DEVELOPMENT FUND

The Development Fund established July 1, 1993 shall be maintained. The County shall contribute Two Hundred Fifty (\$250.00) Dollars per year to the Fund for each Employee in the bargaining unit.

It is understood that the administration of this Fund shall be the entire responsibility of the Union. The Union shall indemnify and hold the County and the Sheriff harmless against any and all claims, demands, suits or other form of liability that shall arise out of or by reason of action taken or not taken by the County and/or the Sheriff for the purpose of complying with the provisions of this Article.

ARTICLE XXVI  
BEREAVEMENT LEAVE

Effective upon ratification of this Agreement by the Essex County Board of Chosen Freeholders, up to three (3) bereavement days, with pay, shall be provided for each death in the immediate family with proper verification. "Immediate family" shall mean the following: parent of Employee or spouse, sibling of Employee or spouse, child of Employee or spouse, spouse of Employee, guardian of Employee or spouse, grandparents of Employee or spouse.

ARTICLE XXVII  
TERM OF THIS AGREEMENT

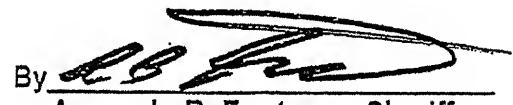
This Agreement shall be effective as of and fully retroactive to January 1, 2002, except as provided herein, and continue in full force and effect until the later of December 31, 2005 or until a new substituted Agreement is negotiated and executed. The parties agree that negotiations for the new Agreement shall commence in June of 2005 for a successor Agreement, provided notice is given in writing by either party.

IN WITNESS WHEREOF, the parties have hereto caused the presents to be signed and attested to this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

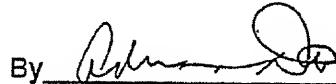
NEW JERSEY STATE POLICEMEN'S  
BENEVOLENT ASSOCIATION,  
LOCAL 183

By:   
Christopher Tyminski, President

By:   
State Delegate

By:   
Armando B. Fontoura, Sheriff

By:   
Joseph N. DiVincenzo, Jr.  
Essex County Executive

By:   
Adrienne Davis, Clerk  
Board of Chosen Freeholders

Approved as to Form

By:   
Harry J. Del Plato  
A/Essex County Counsel

HOLIDAYS

SCHEDULE A

NEW YEARS DAY

MARTIN LUTHER KING'S BIRTHDAY

LINCOLN'S BIRTHDAY

WASHINGTON'S BIRTHDAY

GOOD FRIDAY

MEMORIAL DAY

INDEPENDENCE DAY

LABOR DAY

COLUMBUS DAY

ELECTION DAY

VETERAN'S DAY

THANKSGIVING DAY

DAY AFTER THANKSGIVING DAY

CHRISTMAS DAY

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# **PART B**

## INSURANCE APPENDIX

### SCHEDULE B

#### Pre-Admission Review

Pre-Admission review was established to provide a balanced and comprehensive professional review process with the objective of reducing unnecessary hospital admissions and procedures. Registered nurses trained and certified in utilization review, in conjunction with staff physicians, conduct the process which allows for the development of flexible and highly individualized programs to meet the needs of the County of Essex and the employees. Experience shows that a peer discussion process (physician to physician) is the only effective way to gain true cooperation from the providers affected by the process.

The pre-certification process is implemented as a monitoring tool in the total case management process by facilitating early intervention which allows the review process to influence the site of care and the utilization of medical resources and services associated with the diagnosis. Early intervention by the Peer Review process fosters a spirit of cooperation which paves the way for the efficient resolution of the review process.

The total "utilization management" process includes the pre-certification "point of entry", concurrent follow-up review throughout the confinement, discharge planning, and short-term case management following discharge. When the process identifies those situations of catastrophic potential and those which are likely to reach the stop-loss threshold, large case management can be recommended.

#### Benefits to the Employee

- Maximizing employees' health care benefits
- Ensuring the highest quality of treatment for employees and their families
- Eliminating unnecessary procedures and excessive hospital stays
- Providing employees with a confidential Patient Advocate Line where questions about health care can be answered by health care professionals.

All that is required is that the employee or provider call a toll-free number prior to planned hospital admissions, and within two working days of emergency admissions. Additionally, employees are asked to notify the Medical Review Specialist of maternity care within the first three months of pregnancy. This will allow the Medical Review Specialist to screen for and identify situations that are at high risk for complications of pregnancy and/or premature births. As part of the early intervention component for pregnant women, information will be gathered to better identify the risk factors which will then be shared with the patient's physician.

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SD

An effective utilization management program must be carried out as a mandatory requirement of covered employees. If an employee does not obtain pre-authorization prior to the service being rendered, covered hospitalization benefits will be reduced by 20% to a maximum penalty of \$500.

Commonly Asked Questions About Pre-Admission Review

1. What is Pre-Admission Review?

Pre-Admission Review (PAR) is a program through which you will be advised in advance of a hospital admission, whether inpatient care is necessary for your condition.

PAR is designed to encourage outpatient care when medically appropriate.

Basically, the program is designed to promote health care in an appropriate setting and, at the same time, control health care costs. In essence, it aims to manage health care treatment.

2. How does it work?

If hospitalization is recommended, you must have your doctor call PAR medical review specialists, (doctors and nurses) using the toll-free number.

These medical review specialist will review you case and, based on established medical criteria, determine the proper place of care.

If inpatient hospitalization is determined to be appropriate, the PAR medical specialists will send a copy of the written authorization to you, your doctor, and the hospital.

The PAR medical specialists may determine that another setting ( e.g. hospital outpatient department, doctor's office, surgical center), is medically appropriate for your condition. If so, they will notify you in writing that the requested inpatient admission has been denied and they will suggest other available alternatives.

Please note: A Pre-Admission Review is not necessary for maternity deliveries (vaginal or cesarean).

3. Will participation in the PAR program alter my benefit payment?

Your benefit payment depends on your individual situation. As long as PAR procedures are followed and your inpatient hospitalization is approved, the County of Essex will pay full benefits in accordance with the terms of your health benefits plan. If you follow the PAR procedures and your inpatient admission is denied, you can still be assured of payment, in accordance with your health benefits plan, for the service

performed in an alternate outpatient setting.

If you think the denial is unfair, you or your doctor may request a second review by a different team of medical professionals.

4. What happens if I don't follow the PAR program procedures and I am admitted to the hospital as an inpatient?

If it is determined afterwards that the admission was necessary, you will be liable for 20% of the covered hospital charges that the County of Essex would otherwise have paid, but no more than a maximum penalty of \$500.

5. What if my physician does not call PAR medical specialists?

If your physician does not call, you can call the PAR medical specialists yourself and provide the necessary information. One of the PAR nurses will call your physician for verification and will obtain any additional information that is needed.

6. If my doctor schedules me for surgery in an outpatient setting, do I need PAR?

No, PAR is only necessary when your doctor requests that you be admitted to the hospital as an inpatient (overnight stay).

7. What happens if I have to be admitted to the hospital on an emergency basis?

Either you, a family member, your doctor, or a hospital representative must notify the Referral Center of an emergency admission within four-eight (48) hours.

8. What happens if complications arise from an outpatient surgery and I have to be admitted to the hospital?

If complications arise during an outpatient surgery, making an inpatient stay medically necessary, full benefits will be paid in accordance with the terms of your plan. You must, however, call the Referral Center within forty-eight (48) hours.

9. What if I intend to be admitted to an out-of-state hospital for a non-maternity, non-emergency procedure? Do I still need PAR?

Yes, You must still obtain PAR from the PAR medical specialists. Your Physician should call the toll-free number.

PASO

If you are traveling out-of-state, and need to be admitted to a hospital for maternity delivery, you do not have to obtain PAR. Otherwise, PAR procedures must be followed.

10. Are all members of my family required to participate in the PAR program?

Yes. You and your covered dependents are required to follow the procedures of the PAR program.

11. Why has the County of Essex decided to include this program in our health benefits package?

This program has been included as an effort to promote health care in the appropriate setting and control health care costs so that we can continue to offer quality health benefits. By participating in this program, together we can influence the way health care is delivered without reducing benefits.

#### HOSPITAL TRANSERS

An inpatient being transferred from one hospital to another is considered a new admission. A call to the Referral Center must be placed within 48 hours, or the next business day, advising us of this transfer.

#### OUTPATIENT SURGICAL PROCEDURES

If you are admitted to a hospital as a result of complications from outpatient surgery, a call to the Referral Center must be placed within 48 hours, or the next business day, advising of the admission.

#### NEWBORN EXTENDED STAYS

A newborn child's stay in the hospital is considered part of the mother's maternity admission and is not subject to Pre-Admission Review. However, if the newborn child remains in the hospital after the mother is discharged, this is considered a new admission, and a call must be placed to the Referral Center within 48 hours, or the next business day, advising of this extended stay.

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## MANDATORY SECOND SURGICAL OPINION PRGRAM?

### 1. What is the Mandatory Second Surgical Opinion Program?

The Mandatory Second Surgical Opinion Program (MSSOP) is a program that covers the cost of a second opinion by a qualified specialist when surgery has been recommended to a patient.

The program is designed to promote quality health care and, at the same time, control health care costs. Also, as an informed patient you can make a better decision when faced with surgery. In many cases, an unnecessary surgery can be avoided.

A list of the surgeries for which you must obtain a second opinion is included.

### 2. How does the Mandatory Second Surgical Opinion Program Work?

If you or a family member is advised of the need for surgery by a physician:

Call the Second Opinion Referral Center TOLL-FREE number.

You will be given the names of board-certified cooperating second opinion specialists in your area.

Choose one of them and advise the Referral Center of your choice and the date and time of the appointment.

The Referral Center will mail out a special claim form and a letter confirming the appointment to the doctor.

Keep the appointment (or advise the doctor of cancellation).

After the doctor renders the second opinion, he or she will send the completed form to the Referral Center.

### 3. If the second opinion specialist says I do not need surgery, can I have the surgery anyway?

Yes, the program requires only that you obtain a second opinion. The second opinion does not have to confirm the need for surgery. The final decision to have surgery lies with you, the patient. If the opinions conflict, you can obtain a third opinion which would also be covered under this program. Just call the Second Opinion Referral Center and follow the same procedure you used for the second opinion.

### 4. What happens if I wait a while after getting a second opinion and then decide to have surgery?

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The second opinion is valid on your records at the Referral Center for 90 days. If you schedule surgery after 90 days have elapsed, you must call the Referral Center again to update your records.

5. How much will it cost for the second opinion?

Nothing. If you follow the program guidelines and select one of the doctors from the Referral Center, the cost of the second opinion (and the optional third) is paid in full by the County of Essex.

6. Which surgical procedures are part of the Mandatory Second Surgical Opinion Program?

ARTHROSCOPY	Examination of JOINT using a scope (may include meniscectomy)
CATARACT SURGERY	Surgical removal of cataract (clouded lens) from the EYE
CHEMONUCLEOLYSIS OF DISK	Destruction of VERTEBRAL DISK by injection
CHOLECYSTECTOMY	Removal of GALLBLADDER (may include examination of bile ducts)
CORONARY ARTERY BYPASS SURGERY	Insertion of vein graft to bypass an obstructed HEART ARTERY
EXCISION OF INTER-VERTEBRAL DISK	Removal of a herniated DISK (including excision of disk with fusion)
HYSTERECTOMY	Removal of Uterus
MASTECTOMY	Surgical removal of BREAST (or portion)
MENISCECTOMY	Removal of cartilage from the KNEE
PROSTATECTOMY	Removal of all or part of the PROSTATE
RHINOPLASTY	Surgery of NOSE to correct deformities (includes submucous resection)
SEPTECTOMY WITH RHINOPLASTY	Removal of an obstruction of the NOSE (includes submucous resection)
SPINAL FUSION	Joining of VERTEBRAE for immobilization

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## TONSILLECTOMY

## Removal of the TONSILS

7. What happens if I do not obtain a second opinion?

Coverage for surgery is reduced by 20% to a maximum of \$500.

8. What if my doctor advises me to have a surgery not on the mandatory list, but I want a second opinion?

It is very important to call the Second Opinion Referral Center to discuss the particular procedure. In most cases your health benefits plan will allow for payment, but some surgery is not covered for a second opinion, for example:

- Cosmetic Surgery
- Dental Surgery
- Minor Surgery (i.e. removal of sebaceous cyst)
- Surgery ineligible by your health benefits plan
- Sterilization procedures
- Emergency surgery
- Surgery that is performed on an already hospitalized patient

9. Why do I have to go to one of the Referral Center's doctors?

By using the Referral Center's physicians the County of Essex can:

- guarantee that claims will be paid properly;
- eliminate payment by subscribers for the second opinion consultation; and
- be assured that the cooperating specialist is board certified. Physicians who participate in the program are certified and meet certain criteria.

10. Does the second opinion doctor contact my original doctor?

We ask the specialist giving the second opinion consultation not to contact the Original doctor to discuss findings or recommendations except with the consent of the patient.

11. What if the second opinion specialist wants to take more tests and/or x-rays? Are these charges covered also?

In most cases the County of Essex will ask the specialist not order additional x-ray and laboratory procedures when satisfactory studies are already available. However, there are times when the specialist might feel additional tests are needed. The specialist must call the Referral Center if additional tests are requested.

12. Why can't the second opinion doctor perform the surgery? What if I like him/her better?  
Part of the arrangement between the County of Essex and the Specialists participating in the program, is an agreement that the specialists will not perform the surgery. This was

done to help the second opinion physician make an unbiased diagnosis. If the physician knows he cannot perform the surgery, he or she will not sway the patient to have unnecessary surgery.

13. Are doctors aware of this program?

Yes, they are aware of it and most of them accept it. Doctors realize that the thrust on health care is toward cost containment and patient involvement. As a result of programs like theirs, they deal with more informed, more relaxed patients. Doctors also are aware that some programs are mandatory and that their payments might be reduced if the second opinion was not given. The Referral Center receives many calls from physician's offices asking if specific procedures need a second opinion. They also receive many requests from physicians who wish to join this program as a second opinion specialist.

14. If I am rushed to the hospital in an emergency or if it is determined that I need surgery while hospitalized, do I need a second opinion?

No. If you need surgery while you are hospitalized regardless of your admitting diagnosis, second opinions are not required or allowed. Also, you do not need a second opinion if you are admitted to the hospital for emergency surgery.

15. What if I live out-of-state?

The Referral Center has physicians who provide second opinions for locations outside of New Jersey. If you live out-of-state and require a second opinion, you must call the Referral Center.

16. Why has this program been included in our health benefits package?

This program has been included as an effort to control health care costs. Research has shown that many employees with mandatory second opinion programs in place have experienced substantial savings from these programs. How? The fact is that some elective surgery may not be necessary, yet it always involves some risk and expense. Appropriately 20% of elective surgery will not be confirmed as necessary when a second opinion is obtained. When appropriate, alternative treatments may replace surgery, which in turn may mean reduced risk to the patient. However, when surgery is confirmed by the second opinion, you know that surgery is most likely the best treatment for you.

Schedule C

Last Name	First Name	Title	Entry Date	Status
Jose		Sheriff's Officer	01-31-89	PA
Corpus		Sheriff's Officer	04-11-88	RA
Christopher		Sheriff's Officer	02-07-83	RA
John S.		Sheriff's Officer	01-21-92	RA
Guy		Sheriff's Invest.	05-07-90	UA
Fred		Sheriff's Invest.	09-24-90	UA
Vincent		Sheriff's Invest.	03-09-92	UA
Hamza		Sheriff's Officer	04-05-93	PA
Robert		Sheriff's Officer	08-31-87	RA
John		Sheriff's Officer	07-28-86	RA
Donald		Sheriff's Officer	07-23-84	RA
John		Sheriff's Officer	09-30-85	RA
Ralph		Sheriff's Officer	07-11-88	RA
Gregory		Sheriff's Officer	03-07-88	RA
David		Sheriff's Officer	10-21-74	RA
Carmine		Sheriff's Officer	05-04-70	RA
Id Marlyn		Sheriff's Officer	12-09-85	RA
n Michael		Sheriff's Officer	05-15-89	PA
Arnold		Sheriff's Officer	12-09-85	RA
Deloris		Sheriff's Officer	05-15-89	RA
Trent		Sheriff's Officer	07-14-86	PA
Michael		Sheriff's Officer	06-29-87	RA
Thomas		Sheriff's Officer	04-23-90	PA
George		Sheriff's Officer	08-26-74	RA
James		Sheriff's Officer	05-23-88	RA
Dante		Sheriff's Invest.	06-06-90	UA
Michael		Sheriff's Officer	08-19-91	RA
John		Sheriff's Officer	04-26-93	PA
Bernard		Sheriff's Officer	04-11-88	RA
John		Sheriff's Officer	07-17-87	RA
Joseph		Sheriff's Officer	03-09-92	RA
John M.		Sheriff's Officer	05-23-88	RA
David R.		Sheriff's Officer	08-31-88	RA
Frank		Sheriff's Officer	07-07-86	RA
Andrew		Sheriff's Officer	07-28-86	PA
Marco		Sheriff's Invest.	03/01/93	UA
William		Sheriff's Officer	07-07-86	RA
Samuel		Sheriff's Officer	02-21-61	RA
n Richard		Sheriff's Officer	03-06-72	RA
n William		Sheriff's Officer	08-20-84	RA
Jr. James	J.	Sheriff's Officer	09-17-84	RA
Jr. James		Sheriff's Officer	09-21-59	RA
John		Sheriff's Officer	07-01-85	RA
Bee		Sheriff's Officer	07-07-86	PA
Nicholas		Sheriff's Officer	07-23-84	RA

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Last Name	First Name	Title	Hire Date	Status
Conner	Ronald	Sheriff's Officer	07-07-86	PA
	Edwin	Sheriff's Officer	09-06-83	RA
	Bartholomew	Sheriff's Officer	06-06-69	RA
	Richard	Sheriff's Officer	07-14-86	RA
	Marlon	Sheriff's Officer	04-29-85	RA
	Edward	Sheriff's Officer	09-30-85	RA
	Thomas	Sheriff's Officer	02-06-90	RA
	Donald	Sheriff's Officer	12-09-85	RA
	Philip	Sheriff's Officer	08-11-86	RA
	Richard	Sheriff's Officer	07-13-87	RA
	James	Sheriff's Officer	06-26-89	PA
	Daniel	Sheriff's Officer	07-07-88	RA
	Dominick	Sheriff's Invest.	09-25-89	UA
	Angelica	Sheriff's Officer	05-06-89	RA
	Angelo	Sheriff's Officer	01-14-89	RA
	Mark	Sheriff's Officer	03-27-89	RA
	Vincent	Sheriff's Officer	11-02-86	RA
	Michael	Sheriff's Officer	11-02-87	RA
	James	Sheriff's Officer	06-14-76	RA
	Damian	Sheriff's Officer	06-01-92	PA
	Kirka	Sheriff's Officer	07-07-86	RA
	Christell	Sheriff's Officer	04-29-91	RA
	Kathy	Sheriff's Officer	01-18-82	RA
	William	Sheriff's Officer	09-16-74	RA
	Vita	Sheriff's Officer	08-19-91	RA
	Nicholas	Sheriff's Officer	02-04-85	RA
	Samuels	Sheriff's Officer	10-15-84	RA
	Mary Ellen	Sheriff's Officer	10-31-88	RA
	Peter	Sheriff's Officer	08-24-87	RA
	Raymond	Sheriff's Officer	12-10-84	RA
	Jesus	Sheriff's Officer	05-03-93	PA
	Rosanne	Sheriff's Officer	12-17-90	RA
	John	Sheriff's Officer	02-22-83	RA
	Anthony	Sheriff's Officer	11-02-87	RA
	George	Sheriff's Officer	10-16-67	RA
	George	Sheriff's Invest.	03-29-93	UA
	Anthony	Sheriff's Invest.	10-19-58	UA
	Richard	Sheriff's Invest.	09-28-87	UN
	Georges L.	Sheriff's Officer	04-26-93	PA
	Thomas	Sheriff's Invest.	10-05-89	UA
	Mark	Sheriff's Officer	03-09-92	RA
	Anthony	Sheriff's Invest.	07-26-86	RA
	James	Sheriff's Officer	03-09-92	RA
	Armando	Sheriff's Officer	09-26-83	RA
	John	Sheriff's Officer	07-22-81	RA

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SENT BY COUNTY ADMINISTRATOR : 5-21-93 : 4:55PM : COUNTY OF ESSEX-

201533111218 4/9

Last Name, First Name	Title	Hire Date	Status
Follm	Sheriff's Officer	10-29-84	RA
Vincent	Sheriff's Invest.	02-16-88	UA
Edward	Sheriff's Officer	02-26-68	RA
Joseph	I.D. Officer	10-12-74	RA
John	Sheriff's Officer	07-01-85	RA
Gary A.	Sheriff's Officer	12-21-87	RA
Claude J.	Sheriff's Officer	10-05-87	RA
Thomas	Sheriff's Officer	07-07-88	PA
Robert	Sheriff's Officer	01-05-86	RA
Albert	Sheriff's Officer	10-30-67	RA
Ray R.	Sheriff's Officer	10-30-67	RA
Joseph	Sheriff's Officer	08-19-91	RA
John	Sheriff's Officer	11-09-87	RA
Gerald	Sheriff's Officer	09-22-86	RA
Santino	Sheriff's Invest.	11-14-88	UA
Jose	Sheriff's Officer	09-25-89	PA
Debra	Sheriff's Officer	07-07-86	RA
Stanley	Sheriff's Officer	09-07-86	RA
Michael	Sheriff's Officer	12-10-84	RA
Lori	Sheriff's Officer	12-20-87	RA
Vincent G.	Sheriff's Officer	01-21-92	RA
Geraldine	Sheriff's Officer	10-29-84	RA
Edward	Court Attendant	08-26-74	RA
Fernando J.	Sheriff's Officer	01-17-89	RA
Freddie	Sheriff's Officer	06-25-84	RA
James	Sheriff's Officer	08-15-83	RA
Erica	Sheriff's Invest.	04-12-93	UA
John S	Sheriff's Officer	03-29-83	PA
Dean	Sheriff's Officer	06-26-89	PA
Anthony	Sheriff's Invest.	08-08-86	RA
Jose	Sheriff's Officer	12-17-90	RA
John	Sheriff's Officer	10-15-84	RA
Ronald	Sheriff's Officer	01-07-91	RA
Robert J.	Sheriff's Invest.	11-13-89	UA
Frederick	Sheriff's Officer	10-05-87	RA
Robert	Sheriff's Officer	10-15-84	RA
Joseph	Sheriff's Officer	11-02-87	RA
Toby	Sheriff's Officer	08-19-91	RA
Toussaint	Sheriff's Officer	04-06-92	RA
Roghaid	Sheriff's Officer	04-30-90	PA
Stephen	Sheriff's Officer	06-29-87	RA
James F.	Sheriff's Officer	01-07-91	RA
James	Sheriff's Officer	08-20-84	RA
George	Sheriff's Officer	11-02-87	RA
David	Sheriff's Officer	03-17-86	RA

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Last Name	First Name	Title	Hire Date	Status
H	Dennis M.	Sheriff's Officer	04-24-69	RA
	Donald	Sheriff's Invest.	09-08-87	UA
al	Christopher	Sheriff's Invest.	12-14-87	UA
	Thomas J.	Sheriff's Officer	10-24-88	RA
	James A.	Sheriff's Officer	09-16-74	RA
	Michael	Sheriff's Officer	07-07-88	RA
Y	Laurence	Sheriff's Invest.	11-09-87	RA
	Douglas	Sheriff's Officer	03-22-93	PA
1	Robert	Sheriff's Officer	10-09-64	RA
	Robert	Sheriff's Officer	12-21-87	RA
	Dennis K.	Sheriff's Officer	03-27-89	PA
	Michael	Sheriff's Officer	03-22-93	PA
	Michael	Sheriff's Officer	12-17-90	RA
	Thomas	Sheriff's Officer	08-19-91	RA
	Anthony	Sheriff's Officer	09-21-87	RA
	Unrence	Sheriff's Officer	08-26-74	RA
	Louis	Sheriff's Officer	07-07-88	RA
	Dennis	Sheriff's Officer	10-15-84	RA
	Michael	Sheriff's Officer	01-21-92	RA
	Jonathan C.	Sheriff's Officer	02-22-88	RA
	Joseph	Sheriff's Officer	08-31-87	RA
	Daniel	Sheriff's Officer	12-03-88	RA
	Kris	Sheriff's Officer	04-29-90	RA
Jr	Harry	Sheriff's Officer	12-10-84	RA
	Cyrus	Sheriff's Officer	09-19-88	RA
	Mandal	Sheriff's Officer	02-25-88	PA
	Blanca	Sheriff's Officer	06-27-88	RA
	Nicholas	Sheriff's Officer	10-15-84	RA
	Kenneth	Sheriff's Officer	12-28-87	UA
	Alexander	I. D. Officer	04-26-76	RA
	James	Sheriff's Officer	04-26-76	RA
	Robert	Sheriff's Officer	05-22-77	RA
	David	Sheriff's Officer	02-04-88	RA
	Ahmed	Sheriff's Officer	04-05-93	PA
	John	Sheriff's Officer	09-17-84	RA
	Anton J.	Sheriff's Officer	06-01-92	PA
	Victor	Sheriff's Officer	05-03-93	PA
	Ewald	Sheriff's Officer	10-02-72	RA
d	Jane Ann	Sheriff's Officer	10-15-74	RA
	William	Sheriff's Officer	12-14-92	RA
	Joseph E	Sheriff's Officer	12-17-90	RA
	Ronald	Sheriff's Officer	12-09-74	RA
	erry	Sheriff's Officer	07-14-88	PA
	William	Sheriff's Officer	01-02-68	RA
	Park	Sheriff's Officer	06-01-92	PA

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Last Name	First Name	Title	Hire Date	Status
	Louis A.	Sheriff's Officer	06-26-89	RA
	Vito	Sheriff's Officer	11-18-83	RA
	Gary	Sheriff's Officer	12-17-90	RA
	Thomas G.	Sheriff's Officer	07-08-91	RA
	Herman	Sheriff's Invest.	02-16-88	UA
	Peter	Sheriff's Officer	06-25-84	RA
is	Maria	Sheriff's Officer	06-29-87	RA
is	Ronald	Sheriff's Officer	09-09-74	RA
is	Donald	Sheriff's Officer	07-05-83	RA
is, Jr	John P.	Sheriff's Officer	09-30-85	RA
r	Joseph P.	Sheriff's Officer	05-22-89	RA
	Thomas	Sheriff's Officer	08-20-74	RA
	Edward	Sheriff's Officer	06-27-88	RA
	Robert	Sheriff's Officer	01-03-76	RA
	Vincent	Sheriff's Officer	02-22-88	RA
	Paul	Sheriff's Officer	10-24-88	RA
	Clarence	Sheriff's Officer	10-21-74	RA
	Antonio	Clerk	08-19-91	RA
	Gregory	Sheriff's Officer	08-28-89	RA
	Dominick	Sheriff's Officer	06-06-88	RA
	Peter	Sheriff's Officer	12-09-85	RA
	Frank	Sheriff's Officer	09-17-84	RA
	Michael	Sheriff's Officer	10-14-86	RA
	Arthur	Sheriff's Invest.	05-13-91	UA
	Kevin	Sheriff's Invest.	09-17-90	UA
oss	John	Sheriff's Officer	01-03-76	RA
oss	Joseph	Sheriff's Officer	07-01-85	RA
	Gerard	Sheriff's Officer	08-19-91	RA
	Ricardo	Sheriff's Officer	03-09-92	RA
	Jean	Sheriff's Officer	10-14-75	RA
	Charles	Sheriff's Officer	01-02-63	RA
	George	Court Attendant	06-24-74	RA
	Anthony	Sheriff's Officer	11-10-78	RA
	Victor	Sheriff's Officer	10-31-88	RA
	Manuel	Sheriff's Officer	05-03-93	PA
	Robert	Sheriff's Officer	01-29-65	RA
	Robert	Sheriff's Officer	03-27-89	PA
	Edward	Sheriff's Officer	06-24-85	RA
s	Michael	Sheriff's Invest.	06-22-87	UA
	Vito	Sheriff's Invest.	03-09-92	UA
	Pedro	Sheriff's Officer	06-24-85	RA
	Victor A.	Sheriff's Officer	12-17-90	RA
	Paul	Sheriff's Invest.	01-25-93	UA
	Robert	Sheriff's Officer	09-08-86	RA
	Anthony F.	Sheriff's Officer	05-02-88	RA

Last Name	First Name	Title	Hire Date	Status
	Michael	Sheriff's Officer	03-29-71	RA
	Ferdinand D.	Sheriff's Officer	11-13-89	PA
	Gerard	Sheriff's Officer	02-04-85	RA
	John	Sheriff's Officer	04-05-93	PA
	Anthony A.	Sheriff's Officer	01-25-88	RA
	Louis A.	Sheriff's Invest.	08-27-91	UA
	Tracy	Sheriff's Officer	06-22-92	RA
	Ronald	Sheriff's Officer	03-08-82	RA
	William	Sheriff's Officer	12-15-86	PA
	Anthony	Sheriff's Officer	04-10-72	RA
	Bart	Sheriff's Officer	11-12-89	RA
	Robert	Sheriff's Invest.	08-11-86	UA
	Jose D.	Sheriff's Officer	04-06-92	RA
	Dominick	Sheriff's Invest.	05-20-91	UA
	Ernesto	Sheriff's Officer	01-18-82	PA
	Nicholas	Sheriff's Officer	02-04-85	RA
	Marc	Sheriff's Officer	04-16-90	RA
	Nicole	Sheriff's Officer	05-03-93	PA
	William	Sheriff's Officer	09-08-87	RA
	Jr. Charles R.	Sheriff's Officer	02-20-90	RA
	Marc	Sheriff's Officer	03-22-93	PA
	Patricia Smith	Sheriff's Invest.	09-04-91	UA
	Dorren	Sheriff's Officer	01-21-92	RA
	John	Sheriff's Officer	01-03-76	RA
	Lorenzo	Sheriff's Officer	07-07-86	RA
	Patrick	Sheriff's Officer	06-15-92	RA
	Daniel C.	Sheriff's Invest.	04-02-90	UA

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ALSO ANY PERSONS NAMED ON OR WHO HAS RECERTIFICATION RIGHTS TO THE SEPTEMBER 19, 1990 SHERIFF'S OFFICER CERTIFICATION LIST, SYMBOL No. 1692M WHO MAY BE EMPLOYED AS THE RESULT OF THE RESOLUTION OF CURRENT OR FUTURE LITIGATION AMONGST THE U.S. DEPARTMENT OF JUSTICE, THE DEPARTMENT OF PERSONNEL AND THE MERIT SYSTEM BOARD, THE ESSEX COUNTY SHERIFF'S OFFICE AND PBA LOCAL 183 FOR PLAINTIFFS STEPHEN R. MILLER ET, AL.

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

THE COUNTY OF ESSEX,  
ESSEX COUNTY SHERIFF'S OFFICE

"Public Employer,"

- and -

ESSEX COUNTY SHERIFF'S OFFICERS,  
PBA LOCAL 183

"Employee Organization."

INTEREST ARBITRATION  
DECISION AND  
AWARD

Docket No. IA-2006-052

Before  
James W. Mastriani  
Interest Arbitrator

Appearances:

For the County:

Brian W. Kronick, Esq.  
Carolyn Buccerone, Esq. on the Brief  
Genova, Burns & Vernoia

For the PBA:

Richard D. Loccke, Esq.  
Loccke, Correia, Schlager,  
Limsky & Bukosky

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I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, pursuant to a petition filed by the Essex County Sheriff's PBA Local 183 [the "PBA"] and the County of Essex and Essex County Sheriff's Office [the "County"]. The County and the PBA are parties to a collective negotiations agreement [the "Agreement"] covering 347 Sheriff's Officers, Court Attendants, Identification Officers, and Sheriff's Investigators covering the period January 1, 2002 through December 31, 2005. An impasse developed between the County and the PBA resulting in the submission of the dispute to interest arbitration pursuant to the rules of the New Jersey Public Relations Employment Commission. Thereafter, I was designated to serve as arbitrator.

I conducted pre-arbitration mediation sessions on June 6 and September 19, 2006. During these sessions, the parties narrowed the issues in dispute but were unable to reach a voluntary agreement. Formal interest arbitration hearings were held on January 3, 4, 23 and 24, 2007, at which time the parties examined and cross-examined witnesses and introduced documentary evidence into the record. Testimony was received from Chris Tyminski, PBA President, Officer Donald R. Brown, Director of Administrative Services and Personnel, John D. Dough, Chief of the Sheriff's Department, Delores Capetola, Assistant County Counsel, Alan Abramowitz, Director of Human Resources for the County, Paul J. Hopkins, II, County Treasurer, and Vincent J. Foti, Financial Consultant. Post

hearing briefs were submitted by both parties and transmitted by the arbitrator to each party on or about May 2, 2007.

The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

#### FINAL OFFERS OF THE PARTIES

##### The PBA

###### 1. Wage Increase

The PBA proposes a four (4) year contract with a five percent (5%) across-the-board increase on each successive January 1<sup>st</sup>, commencing January 1, 2006 through January 1, 2009.

###### 2. Article XX – Education Benefits

The PBA proposes an increase in the Educational Benefit Program as follows:

A. 60 credits \$5,427  
30 credits \$2,714

B. Any employee entitled to the above Education Allowance will continue to receive the above amount.

- C. Effective 2005, employees possessing a BA degree will receive an Education Allowance of \$6,050.
- D. The Education Allowance is frozen at the 6 step rate of 60 credits = \$4,920; 30 Credits = \$2,460 and BA Degree = \$6,050.

3. Article XXI - Longevity

The PBA proposes the addition of a longevity benefit in the amount of one percent (1%) for each five (5) years of completed law enforcement service. Law enforcement service shall be defined consistent with pensionable service as recognized by the New Jersey Police and Fire Pension statute and regulations.

4. Article XXV – Development Fund

The PBA proposes to improve the development fund from two hundred fifty dollars (\$250.00) to four hundred fifty dollars (\$450.00) per annum, effective January 1, 2008.

5. Job Related Disability

The PBA proposes the addition of a new provision to be added to the contract which would provide for full retiree medical coverage for employees who are caused to retire due to a job-related disability. The standard for job-related disability shall be consistent with the New Jersey Police and Fire Pension statute definitions and regulations. This would require a modification of page 18 at Section 3(d)5.

The County

1. Term of Agreement

Two years, commencing January 1, 2006 through December 31, 2007.

2. Wages

Effective January 1, 2006: two percent (2.0%) increase on base pay to eligible employees who are on the payroll as of January 1, 2006. Effective January 1, 2007: two and one-

half percent (2.5%) increase on base pay to eligible employees who are on the payroll as of January 1, 2007. Effective December 31, 2007: one-quarter percent (0.25%) increase on base pay to eligible employees who are on the payroll as of December 31, 2007.

3. Prescription Drugs

Effective January 1, 2007, the prescription drug plan co-payment for generic drugs will remain at \$10.00 and the co-payment for brand-name drugs will increase from \$15.00 to \$25.00 for brand-name and non-generic drugs. The County will continue a mail order prescription program.

4. Work Schedule

Effective upon award, implementation of a 24/7 work schedule.

5. Section 125 Cafeteria Plan

Effective January 1, 2007, employees would be eligible to participate in the County's Section 125 Cafeteria Plan.

6. Dependent Care Coverage

Effective December 31, 2007, there will be an increase in copay for dependent care coverage from 20% to 25% for employees hired after 1995. Effective December 31, 2007, unfreeze the rate cap.

7. Unfair Practice Charge

Withdraw Unfair Practice Charge regarding change in copays.

8. Holidays

Delete Section 6.

## BACKGROUND

The County of Essex is the second most densely populated county in New Jersey. There are approximately 800,000 residents occupying 130 square miles yielding 6,285 persons per square mile compared with 1,134 per square mile for New Jersey as a whole. The County is diverse as evidenced by its poorest municipality, the City of Newark, that has a median household income of \$26,913 and a per capita income of \$13,009 in contrast to Essex Fells, its wealthiest municipality, that has a median household income of \$148,173 and a per capita income of \$77,434. The average per capita income for all residents in the County is \$24,943 and its median household income is \$42,705. There are twenty-two (22) municipalities overall that contribute tax revenue to the County and receive services including the prosecution of criminals, court security, correctional facilities and various social services.

In 2005 the real property valuation in the county was \$34,929,744,031 divided into \$23,569,209 residential and \$10,735,746,400 non-residential. The total tax levy for all municipalities in the county was \$1,621,658,734 of which \$325,192,215 was raised for the County. Essex County ranks sixth out of twenty-one counties in state equalized value.

The County's finances have undergone positive change during the last several years. In general, the County, over the past five years, has administered

its finances in a manner that has moved it towards financial stability. It has reduced its structural deficit, improved its bond ratings and stabilized tax increases. The heart of its position in this proceeding is that its law enforcement contracts should not contain terms that it believes would derail its financial plan and that the terms of those contracts should mirror terms the County has negotiated with fourteen (14) non-law enforcement bargaining units comprising of fifty-one (51%) percent of its employees..

The PBA, on the other hand, sees its bargaining unit employees as being grossly underpaid for performing greatly expanded functions that require specialized skills and training especially when their terms and conditions of employment are compared with its proposed field of comparable units in other counties and municipal law enforcement units. It also views the County's recent gains in its finances as allowing for the funding of the PBA proposals without harm to the taxpayers or the County's budget.

N.J.S.A. 2A:154-3 empowers Sheriff Officers to act as officers in the detection, apprehension, arrest and conviction of offenders against the law and they have the full power of arrest for any crime committed in their presence within the territorial limits of the State of New Jersey. The Office of the Sheriff performs functions in areas that include (but are not limited to) maintaining order and security in the courtroom, serving court processes, criminal identification, ballistics and investigation and apprehending violators of the law.

There are approximately 350 employees in the bargaining unit. Some 225 work in court security/transportation or criminal identification (BCI), 12 in the canine unit and bomb squad; and 40 to 45 in the Bureau of Narcotics. Other Sheriff's Officers are assigned to task forces that integrate with the State Police and other law enforcement agencies. The average seniority in the unit is eleven (11) years. A majority grouping of one hundred and ten (110) Officers have ten (10) to fourteen (14) years of seniority. Seventy-seven (77%) percent of the unit is at maximum or top step pay of \$68,677 as of 2005.

The Office of the Sheriff has recently expanded pursuant to an internal Committee Report in 1990 that recommended reorganizing the Office. The Board of Chosen Freeholders adopted an ordinance in 1997 transferring the Division of Essex County Police, Essex Department of Public Safety to the jurisdiction and authority of the Essex County Sheriff. This established the County Police as part of the organizational structure of the Sheriff. In June 2006, the Sheriff ordered the consolidation of the County Police with the Sheriff's Office. A patrol division within the Sheriff's Office was established to perform duties similar to what the County Police performed. The Sheriff reorganized his office due to these expanded duties. This reorganization and its impact on work was set forth in an April 12, 2007 decision of the Merit System Board:

The Sheriff issued an amended general order reorganizing the Essex County Sheriff's office due to the acquisition of additional responsibilities of the County Police Division, the Office of

Emergency Management, Homeland Security, and the County Security Bureau. In order to achieve the most efficient use of personnel, facilities and equipment, the County Police Division was designated as a component of the Field Operations Operational Division. This resulted in certain duties formerly performed by the County Police being performed by Sheriff's Officers. Likewise, duties traditionally performed by Sheriff's Officers were being performed by County Police Officers. In June 2006, for the purpose of economy and efficiency, the Sheriff directed the formal and complete merger of the County Police with the Sheriff's Office. This was to effect administrative, equipment, and personnel advantages. Additionally, since October 2, 2006, all former County Police Officers have been sworn in as Sheriff's Officers and have worn Sheriff's Officers' uniforms, and all former County Police vehicles have been modified to mirror Sheriff's Officers vehicles.

The former County Police Officers who are now under the jurisdiction of the Sheriff have maintained their pre-existing terms and conditions of employment under their prior collective bargaining agreement. They have been merged into the Sheriff's Officers bargaining unit. There is a legal requirement for the County to maintain the status quo otherwise pending negotiations for a new agreement. For this reason, some unit employees enjoy somewhat different terms and conditions of employment than do others. The most notable example of this is the existence of longevity which the former County Police Officers have carried with them although they are now part of the bargaining unit with the Sheriff's Officers who no longer enjoy longevity since its elimination in 1974. Longevity is one of the unresolved issues in this proceeding.

Based upon this general backdrop, the County and the PBA submit the following positions in support of their last offers.

## POSITIONS OF THE PARTIES

### Position of the PBA

The PBA contends that an award supporting its last offer will further the interests and welfare of the public. Its main assertion is that its last offer is consistent with providing compensation and other terms and conditions of employment to unit employees concomitant to the fulfillment of their duties of a comprehensive law enforcement agency rather than the more narrowly drawn duties limited to providing courtroom security in the Courts Division.

A substantial portion of the PBA's presentation was devoted to the broad mission of the Essex County Sheriff's Office. This presentation included testimony of PBA President Christopher Tyminski and documentary evidence. Tyminski's testimony included a breakdown of the deployment of Sheriff's Officers into its various divisions. They include:

- Internal Affairs
- Process Division
- Detective Bureau
- K-9/Bomb Squad
- Bureau of Narcotics
- Bureau of Criminal Investigation
- Courts Division
- Transportation
- Administrative Services

In support of the work of these various divisions, the PBA summarizes the work of these divisions and trends that are said to reflect a broadening of duties:

- Courts Division – The Courts Division is the largest and most active Court Division in the State of New Jersey. Approximately thirty-five (25%) percent of the State's criminal cases are adjudicated by Essex County Superior Court (35% of all work out of the New Jersey 21 Counties)
- The Courts Division annual number of visitors exceeds 2.6 million. The arbitrator is respectfully requested to consider this number as this is much more of a workload than to be a Police Officer in a town of 2.6 million residents. In a town of 2.6 million residents at least part of the day the residents are sleeping. Part of the day many residents may leave town to go to their workplace. This is not so at the Essex County Court System. Every person who appears among the 2,604,470 is awake and a potential security issue which must be dealt with.
- Due to the activity in the Courts Division there are five percent (5%) more judges in 2005 than there were in 2003.
- The Bureau of Criminal Identification ("BCI") comprise an extensive communication center/surveillance alarm center/State and National Law Enforcement Telecommunication System/Sixteen (16) radio channels/State Police Emergency Network /National Warning System (NAWS)/ as well as general patrol within the Court System.
- The BCI Fingerprint Section fingerprints all indictable offenders and maintains records and processes all Federal/State offenders arraigned in Essex County as well as Domestic Violence matters. Job applicants requiring fingerprint identification are also processed through BCI.
- Photo lab services are shared among all municipalities within Essex County.
- In the year 2000 alone over twenty-four thousand (24,000) Defendants were processed through the BCI. Transportation staffing levels are actually reduced notwithstanding the aforementioned increase in transportation as ordered by the Superior Court. The Transportation Division transported over eighty-five thousand (85,000) prisoners in the year 2005 alone.
- The Process Division is another example in reduction of workforce. From 2003 to 2005 the number of Detectives dropped from twenty-five (25) to twenty (20). The activity level within the Process Unit was documented and it should be noted

that this is a revenue source for the County. There are fees for these various services.

- The Ballistics Unit is cutting edge technology. It is relied upon by many agencies outside of the Essex County Sheriff's Office and beyond all of the municipalities within the County. The integrated ballistics identification system is technology provided to the State Police, FBI, ATF and DEA.
- The Bomb Unit and K-9 Units are among the few available to municipalities throughout the County. Whether it be a lost child in the woods or bomb detection, it is the Essex County Sheriff's Office that fills the need and the role.
- The depictions in the Power Point include Mobile Command Posts, Emergency Management, Emergency Medical Technician training and services.
- The Patrol Division, while new during the term of the last contract, has become an integral part of Sheriff's operations. This is purely a County Police operation run by the Sheriff's Department. All personnel performing those patrol duties are Sheriff's Officers.

The PBA points out that its summarization of activities and the importance of the Sheriff's Officers work is also shared by Essex County Sheriff Armando Fontoura. The PBA cites Sheriff Fontoura's testimony at a prior interest arbitration hearing reflecting his view of the extensive law enforcement work performed by Sheriff's Officers:

Well we participate with all other law enforcement agencies in providing safety for the citizens of the County not just around the court complex but around the County. We have responsibility for our park system, which is the largest park system in the State of New Jersey. We require the Division of County Police to also work within our County Sheriff's Office, part of the Sheriff's office and we utilize Deputy Sheriff's Division to provide, keep people as safe as we can.

Our bomb squad, for example, which is mandated by the Court Security Plan approved by the court system is also provided on a reasonable basis throughout the rest of the County since it wouldn't be cost effective for every township to maintain a bomb squad. It takes up to 5 years to get someone trained by the FBI and certified as a bomb technician Sheriff's Officer we provide those services when they are — working within the court complex itself to the rest of the law enforcement community, along with our K-9 Unit, our Bureau of Narcotics also works with the rest of the townships.

We have task force approach with the FBI and fugitive apprehension. We do DEA and we do have a task force, also customs interdiction, with terrorism, this which is important to the rest of the people in the County. Sheriff's Officer we are a full fledged law enforcement agency that participates with the rest of the law enforcement community with providing safety to the people in Essex County and New Jersey.

The PBA also cites approvingly Sheriff Fontoura's testimony in that proceeding that offered his opinion on the effectiveness of the Sheriff's Office:

... I obviously believe that we have one of the finest law enforcement agencies in the State of New Jersey, if not the country. And I'm generally proud of the work that all of our people do on a regular basis and they're very professional and our command structure works extremely well. The men respond well to what they do. We have extreme pride in what we do. We are looked upon in a great of respect.

The PBA further notes that the Sheriff's Office has been expanded due to a June 2006 consolidation of the Division of County Police into the organizational structure of the Sheriff's Department. A Patrol Division was established within the Sheriff's Department to perform similar duties as those performed by County Police Officers. The PBA contends that the County has not provided a competitive compensation program and that unit members are among the poorest paid of all departments who perform comparable work and have

comparable characteristics. The PBA submits that "the most appropriate universe of comparison includes Sheriff's Officers in northeastern New Jersey as well as other urbanized Counties as well as law enforcement agencies in Essex County and the nearby region." Using this field of asserted comparables, the PBA submits a chart comparing its base pay in 2005 to the 2006 maximum base pay in the various law enforcement units:

**Essex Sheriff's Officer Maximum Base Pay (2005)  
Compared to Established 2006 Base Average  
Based on PBA Exhibits in Evidence**

	2006 Base Maximum
Bergen County Sheriff's Officer	\$90,677
Cedar Grove	\$85,572
Florham Park	\$81,914
Caldwell	\$77,454
Fairfield	\$78,520
Mercer County Sheriff's Officer	\$73,081
Ocean County Sheriff's Officer	\$78,538
Passaic County Sheriff's Officer	\$79,568
South Orange	\$73,864
Verona	\$77,310
Wayne	\$99,806
West Caldwell	\$82,315
Millburn	\$73,863
Montclair	\$74,872
Livingston	\$78,112
Monmouth County Sheriff's Officer	\$79,367
North Caldwell	\$77,065
Maplewood	\$74,327
Nutley	\$72,699
Glen Ridge	\$73,485
Average Base Salary	\$75,518
Essex Sheriff's Officer Max (2005)	\$68,637
Difference with 2006 Average	(\$6,881) (10.3%)

The PBA further contends that the base wage changes in its asserted comparables far exceed the offer of the County of 2.0% on January 1, 2006, 0.5% on January 1, 2007 and 0.25% on December 31, 2007 as reflected in its summation of those base wage changes in the various jurisdictions:

**Chart No. 3**  
**Base Wage Changes Based on PBA Exhibits in Evidence**

	2006	2007	2008	2009
Bergen County Sheriff	4	4	4	4.15
Caldwell	4			
Cedar Grove	4.5	4.5	3.75	
Fairfield	4	4	4	
Florham Park	4	5.2		
Mercer County Sheriff	4.25	4.25	4.25	
Ocean County Sheriff	4	4	4	4
Passaic County Sheriff	5			
Passaic County Sheriff/SOA	5			
Somerset County Sheriff	4	4		
South Orange	4.125	4.125		
South Orange SOA	4.125	4.125		
STFA	4	4		
Verona	4	4		
Wayne	4.47	4.46	4.45	4.2
West Caldwell	4	4		
Millburn	4	4		
Montclair	4.9	4	4.5	
Livingston	6	6		
North Caldwell		3.8	3.8	
Maplewood	4.5			
Nutley	4	4		
Glen Ridge	4	4	4	4
Averages	4.132%	4.223%	4.075%	4.07%

In addition to the above comparisons, the PBA submits a chart reflecting percentage increases occurring in various County sheriff offices that it points out are well above what the County has offered in this proceeding:

**Chart No. 5**  
**Comparison of Employer Sheriff Exhibits –**  
**Showing Percent of Base Increases**

Employer Exhibit #		2006	2007	2008	2009
160	Atlantic Sheriff		4	4	4
161	Bergen Sheriff	4	4	4	4.15
163	Camden Sheriff	4	4		
164	Cape May Sheriff	6.1	4.1	4.16	
165	Cumberland Sheriff	7.45			
166	Gloucester Sheriff	5 (2.5/2.5)	4.5	5.25(3/2.25)	4
169	Mercer Sheriff	4.25	4.25	4.25	
174	Passaic Sheriff	5			
175	Salem Sheriff		8.3	8	
177	Sussex Sheriff	5 (4/1)			
179	Warren Sheriff	3.75	3.75	3.75	
Averages		4.95%	4.61%	4.77%	4.05%

In addition to the above base wage comparisons, the PBA contends that Sheriff's Officers are disadvantaged by their current longevity program compared to other law enforcement personnel. The PBA offers a chart reflecting an average payment of \$6,796 in 2006 for seventeen (17) selected jurisdictions at maximum longevity step compared to its longevity program in Article XXI that discontinued longevity for all employees hired after December 1, 1974. In effect, the PBA argues that it no longer has longevity due to the passage of time since it was eliminated. The PBA further notes that the former County Police Officers who merged into the Sheriff's Office do have longevity and were "red circled" and now work along side Sheriff's Officers who do not have longevity.

The PBA disagrees with one of the County's main contentions that the County's final offer follows an established pattern of settlement within the County.

That pattern was asserted in County testimony and documentation to require 3% increases to base wages in each year of a two year term for 2006 and 2007.

Initially, the PBA notes that the pattern of settlement does not include any of the several law enforcement agencies within the County and solely involves employees engaged in non-law enforcement service and maintenance titles.

Even within these latter groups, the PBA contends that there has not been consistency of treatment thereby defeating the County's pattern argument. It submits examples of settlements supporting this point that include the following:

- A. Agreement between County of Essex and International Union of Operating Engineers (Employer Exhibit No. 62) which provides, in addition to three percent (3%) across-the-board increases, performance evaluations of up to one thousand dollars (\$1,000.00) per year (page 11) and a modified merit program. There are further significant changes to various titles within the Memorandum of Agreement. At page 9, paragraph 9 there is an increase for the title stationary engineer from \$58,785 to \$63,100. This single change is worth over 7.3% to that title. There is also an improvement in out-of-title compensation (page 8) and the establish of an increment plan in this Memorandum of Agreement (page 6).
- B. Agreement between the County of Essex and Public Employee Supervisors Union Administrators (Employer Exhibit No. 66) – This contract, in addition to across-the-board three percent (3%) increases for both 2006 and 2007 provide for an increased pay step of an additional one-half ( $\frac{1}{2}$ ) guide range. While the specific numbers are not provided, the additional half step pay, on top of the three percent (3%) for 2006 and 2007 is set forth on page 19. We were not provided with the salary range which would permit calculation of the value of this change. There is no doubt that this represents a significant increase over and above the three percent (3%) across-the-board in 2006 and again in 2007.

C. Contract between County of Essex and Public Employees Supervisors Union Supervisors (Employer Exhibit No. 67) – As with the prior contract this Settlement, in addition to the three percent (3%) for 2006 and 2007 increases and additional one-half (½) step on the respective salary ranges. Further, for certain titles listed at the bottom of page 21 and over to the top of page 22, there is an additional Five Thousand Dollars (\$5,000.00) on top of the previously calculated increases. There is therefore, for both 2006 and 2007, a three percent (3%) increase expanded by an additional half step on the pay range and on top of that for certain titles an additional five thousand dollars (\$5,000.00). Unquestionably, this is worth far more than the asserted three percent (3%).

D. Memorandum of Agreement between the International Brotherhood of Electrical Workers and the County of Essex (Employer Exhibit No. 68) – In addition to the three percent (3%) for 2006 and 2007, this contract provides for an additional eight hundred dollars (\$800.00) in 2007 (see page 3, paragraph 7). There is also a provision for various uniform items which has some value. Once again, this is clearly more than was claimed to be a three percent (3%) settlement.

The PBA contends that the continuity and stability of employment criterion also supports the adoption of its last offer. The PBA notes that despite the broadened duties of the Sheriff's Officers, the number of officers in the unit now are as they were five years ago. Citing Tyminski's testimony, nineteen (19) officers have resigned during the last few years with seventeen (17) of them going to work in another police department. These actual resignations were distinguished from a theoretical number of officers who the PBA believes would have left the department by the lateral transfer route but for the denial of lateral transfers by the informal policy of the department that disallows such requests. The PBA likens these employees to "indentured servants." The PBA further

contends that higher salary levels are needed because Sheriff's Officers are unable to advance their careers through promotional opportunities or other upward mobility. The PBA points to the testimony of Chief John D. Dough that there has only been one promotion out of 350 Sheriff's Officers to a supervisory position since 2005. In the absence of a career path, the PBA argues that higher pay is necessary to reward the rank and file Sheriff's Officers who continue their employment with the County.

The PBA rejects the applicability of private sector terms and conditions of employment when evaluating the salaries and benefits it proposes for unit employees. Among the factors that the PBA alleges distinguish the two sets of employees include work schedules, special qualifications for employment, state residency requirements, hiring criteria, age minimums and maximums for initial hire and retirement, the requirement to act as a law enforcement officer at all times of the day including during off duty status, full powers of arrest, the ability to carry a weapon off duty, and being fire arm qualified.

The PBA offers a financial analysis of the County. It concludes that the County's ability to fund its last offer is present without causing adverse financial impact or creating difficulties with the County's ability to meet its statutory spending limitation. The PBA relies upon the testimony of its expert witness, Vincent J. Foti. Foti commended the County and County Treasurer Paul Hopkins "for doing an outstanding job and rebuilding the County's finances." The PBA

points to an Employer exhibit wherein Essex County Executive Joseph N. DiVincenzo, Jr. in 2006 commented positively on the County's rebuilding process:

We overcame and inherited a \$64 million dollar budget deficit and now have a \$30 million dollar cash surplus that will help us address future challenges. We have eliminated this County's reliance on one-shot revenues to balance our budgets and, for the third consecutive year, we are not going to need short-term borrowing to meet our cash flow needs.

In support of its contentions, the PBA cites official budget documents and submits argument regarding the improved nature of the County's financial condition. It asserts that one financial barometer is the Results of Operations that reflects the County's ability to regenerate surplus. Referring to annual financial statements, it submits the following chart depicting a dramatic change over the last several years:

Year	Amount
2006	\$21,720,693
2005	\$19,169,266
2004	\$29,181,338
2003	\$9,649,409
2002	(\$20,636,794)
2001	\$4,860,687
2000	\$12,388,189

It also points to budget revenues reflecting that more revenues have been realized compared to what the County has anticipated:

Year	Anticipated	Realized	Excess/(Deficit)
2006	\$632,126,584	\$639,036,019	\$6,909,435
2005	\$636,373,540	\$646,093,596	\$8,720,055
2004	\$603,578,180	\$14,165,517	\$10,587,337
2003	N/A		
2002	\$581,579,670	\$554,829,607	(\$26,750,063)
2001	\$562,226,854	\$558,235,95	(\$3,991,759)
2000	\$530,871,737	\$529,012,095	(\$1,859,642)
1999	\$535,304,065	\$53,199,399	\$2,895,334
1998	\$494,088,382	\$484,040,414	(\$10,047,966)

The PBA also points out that the County's tax rate has dropped in each year since 1998:

Year	Rate
2006	N/A
2005	0.4802
2004	0.5138
2003	0.5764
2002	0.6168
2001	0.6558
2000	0.7150
1999	0.7478
1998	0.7523
1997	0.7336

In addition to the above, the PBA points out that property values in Essex County have grown significantly between 1997 and 2005:

Year	Amount
2005	\$68,489,205,500
2004	\$50,868,076,671
2003	\$53,166,027,553
2002	\$47,620,955,529
2001	\$43,007,675,575
2000	\$39,674,974,389
1999	\$37,632,331,174
1998	\$36,865,559,879
1997	\$36,827,024,490

Because property values have continued to grow significantly, the PBA cites the additional revenue that the County has realized from its tax levy:

Year	Amount
2005	\$319,343,294
2004	\$311,643,294
2003	\$304,443,294
2002	\$291,532,586
2001	\$282,478,415
2000	\$281,522,230
1999	\$279,584,425
1998	\$264,042,465

Additional points raised by the PBA in support of its financial view of the County include an increase in the County's bond ratings and the existence of \$1,014,477.00 in unspent salaries in 2005 as reflected in the reserve balance for the Sheriff's Office. The PBA claims that this amount would enable the County to fund a portion of the salary increase the PBA has proposed.

The PBA urges rejection of the County's proposed change to its work schedule. Currently, any employee who works a weekend assignment receives one day off in the following week plus one-half day's pay for each day worked, or time and one-half in pay for each day worked, at the discretion of the Sheriff. The County proposes to move to a 24/7 work schedule what would eliminate weekend distinctions. The PBA contends that the County has not met its burden of proof on this issue in the absence of statistics, reports or proposed work charts that support the change. Its sees the County's proposal as an opportunity to

exercise unreasonable and unnecessary control over work schedules. The PBA contends that there would be an adverse effect on morale and stability if Sheriff's Officers were to work irregular hours and not have a stable work schedule.

#### Position of the County

The County contends that its last offer is more consistent with the interests and welfare of the public because it fits within the County's budget priorities and fiscal responsibilities while the PBA's does not. The County points to its obligations to comply with statutory spending limitations and the newly enacted ninth (9<sup>th</sup>) criteria that imposes a 4 percent (4%) tax levy cap. It fears that the PBA's proposals would cause funds to be taken from elsewhere in the budget causing reductions and/or elimination of services and jobs, a result that would be injimical to the public interest. It fears that other programs that have equally important interests including, but not limited to, roads, parkland and social services would suffer.

The County does not dispute that its financial underpinnings have improved and stabilized in recent years. This is reflected in improved bond ratings. But the County believes that its ability to continue to increase its bond ratings in the future depend upon maintaining a stabilized fund balance rather than seeing its fund balances depleted. In short, it states that it does not wish to return to prior years when revenue surpluses were spent without maintaining consistent revenues and reducing debt service. On this point, it refers to a 2003

Certification from Treasurer Hopkins that described the County's financial state at that time as "dire."

The County, as well as the PBA, seeks significant weight to be given to comparability but sharply differs with the PBA on the set of comparables to be utilized. The County relies heavily upon a "pattern of settlement" argument. The County submits that the PBA's position falls well outside the scope of settlements it has reached with as many as fourteen (14) different bargaining units within the County. These bargaining units include the following:

International Union of Operating Engineers, Local 68, 68A, 68B (Craft Titles, Department of Parks and Recreation and Cultural Affairs); International Union of Operating Engineers, Local 68, 68A, 68B (Engineers); International Union of Operating Engineers, Local 68, 68A, 68B (craft titles - Department of Public Works); CWA Local 1081 - Clerical Unit; CWA Local 1081 - Professionals; PESU Administrators; PESU - Supervisors; IBEW Local 1158-WIA Employees; IBEW Local 1158 - Craft Foremen; IBEW Local 1158 - Division of Training and Employment; IBEW Local No. 1158 (main unit); IBEW Local No. 1158 - Unit Managers & Supervisors; IBEW Local No. 1158 - Commissioner and Registration (C-61-C-73); and IBEW Prosecutor Clerical Unit

The County rejects the PBA's argument that there should be comparability between Essex County and municipal law enforcement units inside or outside the county. It points out that this argument was rejected in a prior interest arbitration proceeding. It also rejects PBA comparisons with counties such as Bergen due to claimed disparities in revenue sources and demographics that are unique to Essex County.

The County contends that a two-year contract duration with a 3% increase in each year would be consistent with a pattern of settlement it has negotiated with the above units. The pattern is said to include not only salary but also a \$10 increase in brand name/non-generic prescription drug co-payments and the adoption of a Section 125 Cafeteria Plan. Pointing to the other agreements, the County asserts that some involve security employees who work in the court complex along with the Sheriff's Officers, clerical employees in the Prosecutor's Office and that, overall, 51% of the County's unionized employees have been subject to the pattern of settlement. The County cites several interest arbitration awards in various municipalities and counties where arbitrators have cited pattern of settlement approvingly. The County's arguments in support of pattern of settlement include the following contentions:

An award that runs against the wave of settlements in Essex County will not only destroy the well-established pattern, but will invite acrimony to the County's labor relations. Issuing an award against the pattern will foster an environment that rejects traditional labor relations. In addition, issuing an award against the pattern would encourage units not subject to this interest arbitration to reject the pattern, and wait until law enforcement units have fully exhausted the interest arbitration process. Further, issuing an award against the pattern will fuel litigation by encouraging more units to go to interest arbitration, adding costs and delaying the process, contrary to the clear purpose of the Act: to settle labor disputes in an expeditious and efficient manner.

The County also notes that the Sheriff's Officers existing rates of pay are higher than other Essex County law enforcement employees other than the Prosecutor's Investigators. Comparing Sheriff's Officers with the Corrections Officers unit, the County points out that they receive higher pay and cannot justify

increases at the five (5%) percent level the PBA seeks along with other expensive benefit increases the PBA has proposed. The County further states that there is other compensation received by Sheriff's Officers other than base pay including the education allowance providing \$3,331 for an Associate's degree.

	Starting Salary	Top Salary
Corrections Officers PBA Local 382	Officer: \$32,532.207	\$66,736,328
Sheriffs Officers PBA Local 183.	Hired Prior to 2/1/97 = \$40,672 Hired After 2/1/97 = \$38,447	\$68,637

The County disputes the PBA's reliance upon municipal contracts. It contends that the most meaningful comparison is among other county Sheriff's Officers and not between municipal police officers. It notes that municipalities are not sufficiently similar in size or geography to the County and that municipal police officers do not perform substantially the same services. The County further contends that the evidence produced by the PBA did not include commonly accepted yardsticks for comparability such as tax revenue, ratables, and total expenditures on police protection. The County submits contracts for other County Sheriff's Officers and submits that Essex County compares favorably in that the top step of \$68,637 is above the average statewide top step of \$65,852 in 2005:

**County Comparison**  
**Top Pay**

County	2004 Top Salary	2005 Top Salary
Atlantic	\$52,868	\$55,000
Bergen	\$83,916	\$87,273
Burlington	\$50,747	\$52,777
Camden	\$64,992	\$67,592
Cape May	\$49,882	\$54,607
Cumberland	\$42,540	\$44,670
<b>Essex</b>	<b>\$65,997</b>	<b>\$68,637</b>
Gloucester	\$51,561	\$55,381
Hudson	\$57,425	\$59,580
Hunterdon	\$52,550	\$54,361
Mercer	\$66,786	\$70,102
Middlesex	\$66,664	Neg
Monmouth	\$70,000	Neg
Morris	\$67,679	\$70,479
Ocean	\$71,398	\$74,075
Passaic	\$72,171	\$75,779
Salem	\$47,000	\$52,500
Somerset	\$65,846	\$68,480
Sussex	\$54,282	\$57,505
Union	\$70,814	\$73,647
Warren	\$52,254	\$56,177
Average	\$60,827	\$65,852

In addition to the above, the County introduces various private sector settlements for comparability purposes asserting that these settlements are either in line with the County pattern of 3% increases or were actually lower than the 3%. These include:

Jersey Central Power & Light, 2 year contract, year 1 – 3%, year 2 – 3% (C-91); New Jersey Symphony Orchestra, 2 year contract, year 1 – 2.64% and year 2 – wage reopener (C-92); Robert Wood Johnson University Hospital, 3 year contract, year 1 – 3%, year 2 – 3%, and year 3 – 3% (C-93); Kimball Medical Center, 2 year contract, 3% deferred increase (C-94); St. Barnabas Behavioral Health Center, 2 year contract – 3% deferred increase (C-94); Trane Co, 3 year contract – year 2 – 3.1% deferred increase and year 3 – 2.6% deferred increase (C-95); Horizon Blue Cross Blue

Shield of New Jersey, 5 year contract, year 1 – 3% deferred increase, year 2 – 3%, year 3 – 3.5%, year 4 – 3.5% (C-96); Public Service Enterprise Group – 6 year contract, year 2 – 3.25% deferred increase, year 3 – 3.25%, year 4 – 3.25%, year 5 – 3.25%, year 6 – 3.25% (C-96); L'Oreal USA, 3 year contract, year 1 – 3%, year 2 – 3% and year 3 – 3% (C-97).

Notwithstanding the County's comparability arguments, it contends that the PBA's final offer of 5% wage increases in each of three years would cause adverse financial impact on the County to meet its statutory spending limitation requirements. The County notes that the Sheriff's Officer unit is the first law enforcement unit in the County to complete an interest arbitration and because this unit has previously set a pattern for the other law enforcement units, the likely financial impact of this award will have a dramatic impact on the County's budget as a whole. It cites legal precedent as requiring consideration of this argument.

The County submits a cost out of the respective final offers. Its calculation is based upon the PBA's proposed 5% wage increases and a theoretical 3% wage increase of its own that is above its last offer. The calculations only concern 2006 and 2007 but, due to the County's two-year last offer, they also include the rollover costs into 2008 while assuming no wage increase for 2008. The cost out reflects the following:

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**Cost-Out of the PBA's Final Offer  
for a two-year term with 5% wage increases**

Current Base Pay \$23,671,792	2006 Increments \$397,607	12/31/05 Base \$23,274,185	Employees 369		
Base Pay \$23,274,185	% Increase		Cost	Rollover	Total Impact
1/1/2006	5.00%	1,163,709	1,163,709.25	0.00	1,163,709.25
1/1/2007	5.00%	1,241,775	1,241,775.06	1,163,709.25	2,405,484.31
1/1/2008	0%		0.00	2,405,484.31	2,405,484.31
					5,974,677.88

**Cost-Out of the County's Final Offer  
for a two-year term with 3% wage increases**

Current Base Pay \$23,671,792	2006 Increments \$397,607	12/31/05 Base \$23,274,185	Employees 369		
Base Pay \$23,274,185	% Increase		Cost	Rollover	Total Impact
1/1/2006	3.00%	698,226	698,225.55	0.00	698,225.55
1/1/2007	3.00%	731,101	731,100.53	698,225.55	1,429,326.08
1/1/2008	0%		0.00	1,429,326.08	1,429,326.08
					3,556,877.70

Based upon the above, the County submits that the PBA's offer would cost \$2,417,800 more than the County's even without added costs associated with the PBA's other economic proposals or a third year wage increase.

The County relies on the testimony of Treasurer Hopkins in respect to the impact of the budget cap and the future cap that will exist on increases in its tax levy as a result of new legislation. Hopkins testified that the County is subject to a 2.5% cap but that the County can pass a resolution increasing the cap to 3.5% and bank anything not used for use over the next two years. Hopkins noted that

although the County has increased its tax levy by only 2.9%, over the last three years total taxes have increased by 6.1% and by 37.3% over the last six years. In addition, Hopkins testified that pension costs have been increasing as the costs are phased in towards 100%. He also testified to premium increases in health and liability insurance. Hopkins testified that the County has made significant efforts to control its debt service. He believes that the debt restructuring plan requires the County to be prudent in its spending in order to bring the debt service down. The plan has done so and this has been recognized by the bond rating agencies who have rewarded the County's efforts. Hopkins acknowledged that the County has far greater stability than it did in its recent past but that a continuation of its fiscally responsible plan is necessary in order to maintain that trend.

The County has proposed a two year contract term. It contends that it needs the two year term to continue to allow for the reassessment of its finances towards the goals of stabilizing its finances and decreasing its debt service. The County also points out that fourteen (14) units have already accepted two year contracts thus setting a pattern with respect to duration.

The County also proposes a change in the work schedule. It wishes to move to a 24/7 work schedule. The existing schedule provides a forty (40) hour week and eight (8) hour days. According to the County, the change would permit the department to create normal workweeks that include weekend days without

having to offer premium pay or compensatory time off for those days. The County points to the testimony of Chief Dough who offered several reasons for the proposed change including having the need to provide better service at all hours and days and to further specializations by having officers work on a full-time rather than a part-time basis on the weekend. According to Chief Dough, the current system has resulted in the County owing more than two hundred (200) compensatory days for the performance of weekend work. Chief Dough testified that in order to fill these days he may have to substitute officers to fulfill the vacancies through reassignments or through overtime. He believes that a more efficient and effective agency would result by having the ability to transport arrests from other law enforcement agencies who all operate on a 24/7 work schedule. He testified to having suspend investigations on occasions during weekends because there were no officers assigned to perform those duties.

The County has proposed to implement a Section 125 Cafeteria Plan. The Plan is voluntary and would result in a flexible spending account that an employee would fund on a pre-tax basis. The purpose of the funds would be to offset any insurance costs and dependent care coverage that an employee might incur. The County points to fourteen (14) other units whose settlements include the Plan as well as the fact that the plan has been implemented for management employees.

An additional County proposal is to increase the amount that an employee would pay for Dependant Care Coverage. Specifically, the County seeks an increase in the co-pay from 20% to 25% for employees hired after 1995. The proposal would be effective on the last day of its proposed contract, December 31, 2007. The County seeks support for this proposal because of increases in health insurance costs and the dwindling number of employers in the private sector who pay 100% for family coverage. The County recognizes that this proposal is not part of the recent settlement pattern but that the proposal is not unreasonable in light of the skyrocketing costs for health care and that non-law enforcement units are subject to this co-pay in prior agreements. The County cites recent settlements between Unions and the State of New Jersey that require employees to contribute 1½% of their salary towards health care costs. The County emphasizes that its proposal is far more modest and only seeks to increase the contribution for dependent care in the nominal amount of an additional .5% and to lift the 1993 cap on rates upon which to calculate that percentage.

An additional proposal of the County is to remove Section 6 from the Holiday Article although the intent of its proposal is more limited. Under the current provision, a Sheriff's Officer receives an extra day's pay if a holiday is declared by the Board of Chosen Freeholders, the County, the President, Congress or the Governor. The County's proposal would limit any additional paid holidays to those declared by the Freeholders, the County or the Governor.

Citing the testimony of Delores Capetola, Assistant County Counsel, the County argues that the amendment it has proposed to the provision would simply bring this contract into conformity with other units. Otherwise, the Sheriff's Officers would unfairly have an extra paid holiday while other similarly situated units would not leading to internal friction.

The County also proposes a modification to the Drug Prescription Plan. Currently employees have co-pays of \$10.00 for generic drugs and \$15.00 for name brand drugs. The Employer seeks to increase the co-pays for brand name drugs from \$15.00 to \$25.00. The County projects that prescription renewals would decrease by more than \$300,000. Given the increases in the health care costs, the County contends that the increase is reasonable and that it is no more than the other bargaining units have already agreed to.

#### DISCUSSION

The parties did not agree upon an alternative terminal procedure. Accordingly, pursuant to statute, the arbitration was conducted under the procedure of conventional arbitration. That procedure authorizes the arbitrator to fashion an award without being required to adopt the final offers of the parties.

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8)

which I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the

public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services; (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by Section 10 of P.L. 2007, c. 62 (A1 CC).

It is traditional in interest arbitration proceedings for the party that proposes changes to bear the burden of proof for the modifications to the agreement that it has proposed. I apply that principle as part of my analysis to each issue in this dispute. While I must consider the merits of the various proposals individually, I refer to criterion N.J.S.A. 34:13a - 16g(a). This criterion allows for factors which are ordinarily considered in making determinations on wages and benefits to be given consideration when rendering an award. One

such factor requires that consideration be given to the totality of the changes to be made to the existing agreement. Thus, any decision to award or deny any individual issue will include consideration as to the reasonableness of that individual decision in relation to the reasonableness of the total terms of the entire award. I proceed next to decide the individual issues in dispute.

#### SALARY AND CONTRACT DURATION

The most significant issue in dispute is salary, an issue that also directly implicates contract duration. During negotiations for the last agreement, January 1, 2002 through December 31, 2005, the salary issue was the subject of extensive proceedings prior to finalization. The Agreement that expired on December 31, 2001 and was modified by an agreement resulting from an interest arbitration award on August 20, 2004. That award was appealed and affirmed by PERC on January 27, 2005. A Memorandum of Agreement was executed by the parties implementing final contract terms during July 2005. Given this history, and the virtual immediate return to negotiations and interest arbitration proceedings for resolution of the next contract, the Union understandably seeks a contract of greater duration than two years. However, this position must be viewed in a broader context.

The County proposes a two (2) year agreement commencing January 1, 2006 through December 31, 2007 while the PBA proposes a four (4) year contract effective January 1, 2006 through December 31, 2009. The County

# PART C

objects to more than a two year agreement due to the existence of two year agreements it has entered into with fourteen (14) non-law enforcement units and its desire not to commit to budgetary decisions of consequence that extend beyond December 31, 2007 due to continued implementation of its budget plans that have put the County towards improved financial health.

In the abstract, a two year agreement would not represent the most desirable term for duration. This is so because an agreement beyond two years would allow for the administration of an agreement without having to simultaneously engage in negotiations or interest arbitration. However, given the County's express need for shorter term budget review in connection with its plan to continue to stabilize its finances, a shorter agreement is more appropriate and would allow for the development of contract proposals for the future in light of circumstances present that go into the 2008 budget year. The County's finances have sufficiently stabilized to the point where a 2006 and 2007 contract can be finalized without the compensation sacrifices the rank and file endured by having salary deferrals for three of the four years of the prior agreement and wage increases that were below the goals of the PBA. This is not to suggest that external comparables should be controlling, but the prior award was issued in a context of financial transition. At this particular point, an award can be predicated on firm financial evidence for 2006 and 2007 and afford a greater opportunity for improvement in contract terms based upon this evidence without engaging in speculation over future budgets. I also give substantial weight to the two (2) year

term in the agreements for the fourteen (14) agreements that have been satisfactorily concluded, although I do not find the substantive aspects of those contracts to be dispositive. For these reasons, I award a contract duration of two (2) years.

The main arguments presented by the County and the PBA in support of their salary proposals are both linked to comparability. However, the comparability evidence each party claims to be relevant and the respective field of claimed comparables sharply differ. The PBA focuses on levels of compensation contained in salary schedules and recent changes made to those schedules in a select group of municipal law enforcement agreements as well as in other County Sheriff's Officer departments including Bergen, Passaic and Ocean. It contends that Essex does not compare favorably in salary and compensation related issues. The County, on the other hand, emphasizes changes that were recently made in fourteen (14) of its non-law enforcement units that it claims forms an internal pattern of settlement that compels the adoption of those terms in this proceeding. The County does not dismiss the relevance of labor agreements in other county agreements but points to those departments where Essex compares more favorably such as in Sussex, Somerset and Hudson. The County's argument is based on record evidence that Essex demographics and socio-economic characteristics that differ from those offered by the PBA. The County also submits comparability data from various labor agreements in unionized private sector companies that it says provides

additional justification in support of its last offer. The PBA seeks rejection of these private sector settlements on grounds that the employment conditions unique to law enforcement do not exist in the private sector. The County also submits comparability data for public employment in general including recently negotiated contracts between the State of New Jersey and non-law enforcement units providing for settlements averaging slightly above 3%.

Under N.J.S.A. 34:13A-1b(g)(2)(a)(b) and (c), all of this evidence is relevant and must be considered despite each party's reliance on its own field of comparables. Given the parties' own emphasis on this criterion and its subsections, the comparability evidence is entitled to substantial weight.

Additional criteria that are entitled to substantial weight are the lawful authority of the employer and financial impact [see N.J.S.A. 34:13A(g)(6) and (9)] and the interests and welfare of the public, N.J.S.A. 34:13A(g)(1). The latter criterion interrelates directly with the other referenced criteria dealing with the County's finances and the public's ability to fund the labor agreement. However, it also includes consideration of broader and less direct impacts such as the morale of the workforce, the protection of the public, courtroom security and the effective integration the County's law enforcement function with state and local police systems and duties.

Also relevant, but be given less significant weight on this record, are criteria referencing the cost of living (subsection (g)(3), the overall compensation of unit employees (subsection (g)(3), the cost of living (subsection (g)(7) and the continuity and stability of employment (subsection 8).

Without inferring significance due to order of analysis, I next address the evidence in support of the criteria. I note that because the evidence has been submitted in such comprehensive fashion, it does not allow for all of the exhibits to be specifically addressed.

The cost of living data tends to support the County's position over the PBA's. The County submits CPI data for Urban Consumers between 2001 and 2006 reflecting that salary increases have outpaced the CPI increased by 6.9% over these years even if the County's 2.0% proposed increase were to be adopted in 2006. This data is from the U.S. city averages but it is consistent with urban data from New York-Northern New Jersey – Long Island. While the data does not support the 5% proposed wage increases sought by the PBA, the data is not controlling to the extent that an award should be set by increases in the CPI. The data must be viewed in the context of overall evidence reflecting that virtually all salary adjustments in law enforcement agreements have exceeded the cost of living data including for those contract years that parallel those in this proceeding. The more recent wage data for County Sheriff's Officers generally

and for municipal law enforcement employees in Essex County reflect enhancements in salary beyond the low CPI figures.

The continuity and stability of employment factor is relevant but does not suggest an award at either the level proposed by the County or the PBA. Exhibits and testimony at hearing addressed this criterion at length. The County sees this evidence as supporting its position that terms for the new agreement need only be increased at the level it proposes in order to continue to satisfy its goals of hiring and maintaining unit employees. The PBA sees the evidence as requiring substantially more than an average increase because, as PBA President Tyminski stated, "we are losing people in droves."

The data has been examined. It reflects that between 1999 and September 2003 there were sixty-nine (69) employees who terminated employment with the County for all reasons. In 1999 there were thirteen (13) separations. Four (4) of the separations were non-retirement in nature while nine (9) were by way of retirement. The total in 1999 represents a 4.3% turnover rate. In 2000 there were twenty-two (22) separations, eleven (11) were non-retirement and eleven (11) were due to retirement for a seven (7%) percent turnover rate. In 2001 there were fourteen (14) separations, seven (7) were non-retirement and seven (7) were due to retirement for a 4.4% turnover rate. In 2002, fourteen (14) employees separated, eight (8) by way of retirement, a 4.6% turnover rate. In 2003 nine (9) employees separated with four (4) were due to retirement, a 2.80%

turnover rate. PBA evidence reflects that since January 1, 2003 that nineteen (19) employees resigned to accept positions elsewhere with seventeen (17) going to other law enforcement agencies. The PBA submits this total would have been larger if there were not an informal policy in the department of refusing to certify and approve lateral transfers under NJDOP policy. An additional concern raised by the PBA is the dearth of promotions. There has only been one (1) promotion out of three hundred and fifty (350) employees since 2005.

The data reflects that the loss of employees is not as dramatic as asserted by the PBA nor as insignificant as asserted by the County when the separations are viewed in the context of overall employment levels. The County has maintained a healthy list of eligibles for employment (150) and the ratio of lost employees is not as harsh as depicted by the PBA. However, there is merit to the PBA's linkage of the lower numbers to the "informal policy" of denial of interdepartmental or intergovernmental transfer, a fact that could minimize the turnover rate because employees would be forced to resign rather than transfer at guaranteed salary levels. In sum, this criterion suggests an award beyond the County's proposal because it would diminish the relative value of the PBA salary schedule in relation to other county sheriff's officer agreements and also to those in municipal law enforcement units potentially leading to a higher number of resignations. At the same time, an award at the level sought by the PBA is not justified by the evidence on employee turnover nor its almost exclusive reliance upon external labor agreements.

The overall levels of compensation and benefits [subsection (g)(3)] also requires consideration when reviewing the merits of the parties' proposals. Those levels, on balance, show reasonable levels of equivalence when other county sheriff's officer units are compared and contrasted. Depending on county comparables in terms of finance, socio-economic and demographics, the existing levels of compensation and benefits reflect more or less favorably. Essex County ranks eighth of twenty-one in salary comparisons, is higher in educational allowances, lower in longevity and in relative balance with many others such as vacation and sick leave. There is no compelling reason for this criteria to be applied in a manner that would support the adoption of terms of proposed by either party.

As noted above, the County and the Union have had salary disagreements in recent past. Similar evidence and arguments were presented by these same parties in those proceedings in support of positions taken on similar issues that were in dispute. In summary fashion, and at the risk over oversimplification, it was found in prior proceedings that the job of a sheriffs' officer was not comparable to that of a municipal police officer for maximum salary purposes. But also, the internal settlements, then claimed as a pattern, were not given controlling weight. Instead, after giving "due weight" to all relevant factors, wage increases were awarded on the basis of many considerations and not by the application of any specific formula.

The more significant criteria on this record are comparability, statutory limitations and financial impact. The interests and welfare of the public criterion is an overriding factor because it is a factor that is superimposed upon all of the above criteria. That is, the interests and welfare of the public will be served by salary terms that are in reasonable balance with internal and external comparability, within the legislative financial limits imposed upon the County and consistent with the governing body's and the public's ability to fund levels without adverse consequences.

After applying all of the credible evidence offered in this proceeding, I conclude that a reasonable determination of the salary issue is an award of 4.0% effective January 1, 2006 and 4% effective January 1, 2007. These terms, during these contract years, have taken into consideration the compensation deferrals undertaken by this unit during preceding years in the prior contract.

I find, as was the case in the prior proceeding, that the internal settlements are not dispositive but that they do influence the general framework for consideration of the salary issue. Otherwise, a simple formula of parity with a grouping of external law enforcement units would dictate a result independent of what occurs within the County. Yet, to restrict the award to the internal settlements would be inconsistent with the terms of the prior contract and render the law enforcement comparability evidence meaningless. The internal

settlements do have 3% base wage increases but the overall terms of each agreement contain individualized economic adjustments that are unique to each unit that cause overall economic impact to be beyond the percentage base wage increases. These agreements have previously been set forth and need not be restated here but the overall impact of these terms reach above the 3% base wage increases. The external comparability data must also be considered. The average of those increases in municipal and county agreements in the field of comparables submitted into the record exceed 4%. The field, if expanded to statewide average is less. This data, when balanced with the terms of the internal settlements, support base wage increases at the levels that I have awarded.

As of December 31, 2006 the roster upon which to base cost outs reflect that there were 372 employees in the PBA Local 183 unit. Total salary was \$23,923,643. The base wage average was \$64,311, the mean salary was \$53,543 and the salary range minimum was \$38,447 and top step was \$68,637. The salary schedule at the time of expiration, December 31, 2005 is as follows:

	01/01/02	07/01/02	07/01/03	04/01/04	01/01/05
Start	\$33,183	\$33,344	\$35,546	\$36,968	\$38,447
Step 1	\$37,527	\$38,840	\$40,200	\$41,808	\$43,480
Step 2	\$41,869	\$43,334	\$44,851	\$46,645	\$48,511
Step 3	\$46,213	\$47,830	\$49,505	\$51,485	\$53,544
Step 4	\$50,558	\$52,328	\$54,159	\$56,325	\$58,578
Step 5	\$54,899	\$56,820	\$58,809	\$61,162	\$63,608
Step 6	\$59,240	\$61,313	\$63,459	\$65,998	\$68,637

The terms of the Award yield the following new wage schedule:

	4.0% January 1, 2006	4.0% January 1, 2007
Start	\$39,984	\$41,584
Step 1	\$45,219	\$47,027
Step 2	\$50,451	\$52,470
Step 3	\$55,685	\$57,913
Step 4	\$60,921	\$63,358
Step 5	\$66,152	\$68,798
Step 6	\$71,382	\$74,238

The cost of the Award, with calculations based upon County projections of cost outs is \$930,967 in 2006, \$968,206 in 2007. In chart form, the costs relative to the parties' last offers (with the County's calculated off a projected assumed 3% increase) are as follows:

	PBA	Award	County
2006	\$1,163,709	\$930,967	\$898,226
2007	\$1,221,894	\$968,206	\$719,172

The costs of the award, based upon the official budget documents on the record, can be met without interfering with the County's statutory obligations and without adverse financial impact on the governing body, its residents and taxpayers. The budget data, when read as a whole or within the Sheriff Office line item contain sufficient funds to meet the additional costs of the award even upon projections of a 3% wage increase not proposed by the County but assumed. I have considered not only the costs for this unit but the potential impact of extending these or similar terms to the remaining law enforcement units.

The County's financial position has become far more positive in 2006 going forward than it was between 2000 and 2005. Its bond rating has improved and its debt service has been reduced. It has now shown an ability to regenerate surplus and avoid using surplus and debt to make current expenditures. This does not suggest that it could, or should, devote additional monies to fund the PBA's proposal without adverse financial impact. However, the County's improved posture allows, as here, for increases at these levels, after consideration of present budgetary data and in light of the terms of the prior agreement.

#### HOLIDAYS

The County proposes to modify Article VIII - Holidays. The provision states:

Section 6. In the event an employee covered by this agreement is required to work on a legal holiday or a day declared to be a holiday by the Board of Chosen Freeholders of the County of Essex, the President, Congress or the Governor, the employee shall be paid an extra day's pay for each holiday worked. Payments shall be made within thirty (30) days of the holiday worked.

Although the County has proposed to delete Section 6, the stated purpose of its proposal is to eliminate the granting of a holiday if such holiday is declared by the President or Congress. The PBA opposes the modification sought by the County.

The reasoning in support of the proposal is that the County believes that it should not be held to have to grant an extra holiday to unit employees based upon a federal decision that is independent from any decision made by the State of New Jersey or the County. The proposal seeks to conform the PBA Agreement to other units in the County to provide consistency as to when an additional paid holiday is granted. It is reasonable for the County to seek consistency among all its employees as to when an additional holiday is granted to avoid a situation whereby similarly situated units would be required to work a normal work schedule while Sheriff's Officers receive an extra days pay.

Accordingly, effective upon the date of this Award, Article 8, Section 6 shall be modified to delete references to the President and the Congress. The new Section 6 shall read as follows:

Section 6. In the event an employee covered by this agreement is required to work on a legal holiday or a day declared to be a holiday by the Board of Chosen Freeholders of the County of Essex or the Governor, the employee shall be paid an extra day's pay for each holiday worked. Payments shall be made within thirty (30) days of the holiday worked.

HOSPITALIZATION, MEDICAL, SURGICAL  
AND MAJOR MEDICAL INSURANCE

The County proposes two changes to Article X. The PBA opposes any change to this provision. The first proposal of the County is to modify Section (1) (c) (2). Currently, employees hired after June 16, 1993 pay a twenty (20%)

percent co-pay for dependent coverage at the applicable 1993 rate. The County proposes to increase the co-pay for employees hired after 1995 to twenty-five (25%) percent and to unfreeze or lift the rate cap effective December 31, 2007. In addition, the County proposes an increase in the prescription drug plan co-pay. The current plan is set forth in Section (2) as follows:

Section 2. A prepaid drug prescription plan paid for by the County shall be continued in effect. The County reserves the right to select the insurance carrier who shall provide such benefits. The County of Essex shall have the right to maintain the following:

- (a) One (\$1.00) dollar co-pay for generic drugs;
- (b) Five (\$5.00) dollars co-pay for non-generic drugs;
- (c) The prescription co-pays shall be increased to ten (\$10.00) dollars for generic drugs and fifteen (\$15.00) dollars for name brand drugs to be effective March 16, 2005. The mail order prescription plan shall be continued.

The County proposes to maintain the current co-pay for generic drugs and increase the co-pay for brand name and non-generic drugs from \$15.00 to \$25.00. The County would continue the mail order prescription program.

The County's proposal concerning prescription drug plan co-pay is consistent with changes that were made to its prescription program with fourteen (14) other negotiating units. The interests and welfare of the public would be served by the County maintaining a prescription plan that is consistent on a county-wide basis. The modification sought will not modify the actual prescription plan itself. It would maintain the current level of benefits for generic drugs and the mail order prescription plan but provide a greater separation in the

co-pays between generic and non-generic drugs. A reasonable inference can be drawn that the modification would provide a greater incentive for employees to select generic drugs or utilize the mail order prescription program. In either case, the County would realize cost-savings that would help maintain the broad level of medical benefits it now provides to its employees. Accordingly, effective as soon as is administratively feasible, the County shall modify its prescription co-pay for brand name and non-generic drugs from \$15 to \$25.

I next turn to the County's proposal to increase the co-pays for the dependent care coverage from 20% to 25% for employees hired after 1995 and to unfreeze the rate cap effective December 31, 2007. The PBA seeks rejection of this proposal. The County submits that its proposal is not unreasonable given the increases in health insurance costs and the trend towards greater cost sharing for dependent health coverage. The PBA contends that the proposal should not even be considered because it alleges that it was entered into arbitration in an untimely fashion by representing a revision to the County's last offer that would make the last offer less reasonable. While this represents an accurate depiction of the procedures that were agreed to at hearing, the County later revised its last offer consistent with that procedure by increasing its wage proposal by 0.25% effective December 31, 2007 in conjunction with the re-proposing of the co-pay issue thereby. In my judgment, this revised proposal is within the procedural understanding reached at hearing and therefore, I exercise my discretion to allow this proposal for review.

I have examined and considered this issue in the context of the overall terms and conditions of employment that have been awarded herein. The determination on this issue is to deny the proposal. Given the two year duration, this proposal falls beyond the reasonableness of the total package that has been awarded. The County is free to resubmit this proposal in the context of an agreement that extends into future years. After due consideration, I do not award this proposal and will continue the status quo on the existing co-pay for dependent care coverage during this contract term.

### EDUCATION BENEFITS

The PBA proposes an increase in the Education Benefits payments set forth in Article XX. This provision now states:

Employees covered by this Agreement shall be eligible for the same benefits for additional education credits received in accordance with the program established for Correction Officers. Such benefits shall be frozen at the current level of Three Thousand Three Hundred Thirty-One (\$3,331.00) dollars per year for a full increment (for sixty (60) completed credits) and one thousand six hundred sixty-five (\$1,665.00) dollars per year for a half ( $\frac{1}{2}$ ) increment (for thirty (30) completed credits). The current practice regarding payment procedure shall continue.

The PBA's proposal would increase and extend the benefit as follows:

- A.     60 credits \$5,427  
          30 credits \$2,714
- B.     Any employee entitled to the above Education Allowance will continue to receive the above amount.

- C. Effective 2005, employees possessing a BA degree will receive an Education Allowance of \$6,050.
- D. The Education Allowance is frozen at the 6 step rate of 60 credits = \$4,920; 30 Credits = \$2,460 and BA Degree = \$6,050.

The existing benefit now caps at the 60 degree level which is consistent with achieving credits at the level of an Associate's degree. Given the undisputed record testimony as to the additional skills and knowledge required to perform the expanded duties of the job, an extension of the benefit to a Bachelor's degree has merit as well as modest increases to the 30 and 60 credit levels that have been frozen. Accordingly, I award a payment of \$5,250 for an employee who holds a Bachelor's degree at an accredited institution effective January 1, 2007 and adjustments to \$1,750 and \$3,500 respectively for the 30 and 60 credit levels. The revised article shall read:

Employees covered by this Agreement shall be eligible for the same benefits for additional education credits received in accordance with the program established for Correction Officers. Such benefits shall be frozen at the current level of Three Thousand Five Hundred (\$3,500.00) dollars per year for a full increment (for sixty (60) completed credits) and One Thousand Seven Hundred Fifty (\$1,750.00) dollars per year for a half ( $\frac{1}{2}$ ) increment (for thirty (30) completed credits). An employee who holds or achieves a Bachelor's degree at an accredited institution shall receive Five Thousand Two Hundred Fifty (\$5,250.00) dollars. The current practice regarding payment procedure shall continue. These payments are effective January 1, 2007.

## DEVELOPMENT FUND

Article XXV provides for the creation of a benefit pursuant to the following terms:

The Development Fund established by July 1, 1993 shall be maintained. The County shall contribute two hundred fifty (\$250.00) dollars per year to the fund for each employee in the bargaining unit.

It is understood that the administration of this fund shall be the entire responsibility of the Union. The Union shall indemnify and hold the County and the Sheriff harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken or not taken by the County and/or the Sheriff for the purpose of complying with the provisions of this Article.

The PBA proposes to improve the funding from two hundred fifty (\$250) dollars to four hundred and fifty (\$450) per annum, effective January 1, 2008. The County seeks rejection of this proposal.

The County's main objection to the proposal is based upon cost. It asserts that the impact of the proposal rises to \$74,000 annually and that the PBA has not presented any evidence to support such level of increase. This opposition must be balanced against the fact that the existing level of contribution has remained static for many years. The existence of the fund by mutual agreement is sufficient to reflect justification for the maintenance of the fund. An increase in the contribution is warranted but not to the extent sought by the PBA.

The annual contribution to the fund shall be increased by \$100 to a \$350 contribution at a cost of approximately \$37,000 effective January 1, 2007.

#### JOB RELATED DISABILITY

The PBA proposes a new provision to Article X concerning job related disability. It states:

The PBA proposes the addition of a new provision to be added to the contract which would provide for full retiree medical coverage for employees who are caused to retire due to a job-related disability. The standard for job-related disability shall be consistent with the New Jersey Police and Fire Pension statute definitions and regulations. This would require a modification of page 18 at Section 3(d)5.

The County seeks rejection of this proposal.

Currently, employees with less than twenty-five (25) years of service do not qualify for service retirement under the terms of the Agreement. Instead, they are eligible to purchase health benefits through the entire group of the County of Essex or purchase benefits through COBRA. The benefit sought is currently not provided in any of the law enforcement agreements within the County. The adoption of this proposal for this unit and the potential cost for its extension into other law enforcement units of the County has not been estimated by the PBA. The County asserts that the proposal, if adopted, would create a significant financial burden, although it does not submit its own financial analysis. In the absence of a financial impact analysis, the remaining pros and cons for the

adoption or rejection of this proposal cannot be properly undertaken. Accordingly, I do not award this proposal.

#### SECTION 125 CAFETERIA PLAN

The County proposes to allow unit employees to participate in its Section 125 Cafeteria Plan. The PBA does not agree to this proposal but offers no specific opposition to the inclusion of unit employees in the Plan.

The County's rationale for implementing the Plan is persuasive. It is a voluntary plan at no cost to unit employees and the Sheriff's Officers can decline to participate if they so wish. In the event that they would choose to participate, it would allow them to set some of their income into the Plan where it would accumulate on a pre-tax basis. The funds that are set aside could serve to offset any insurance costs and dependant care coverage that an employee might incur. Moreover, it simply makes sense to provide the same opportunity to unit employees that exists for non-union management employees and fourteen (14) other bargaining units who have the opportunity to participate in the Plan. For these reasons, the County shall have the authority to implement a new provision that would allow unit employees to participate in its Section 125 Cafeteria Plan as soon as it is administratively feasible.

## LONGEVITY

Article XXI provides for a longevity program but discontinued eligibility for employees hired after December 31, 1974. The PBA offers the following proposal:

The PBA proposes the addition of a longevity benefit in the amount of one percent (1%) for each five (5) years of completed law enforcement service. Law enforcement service shall be defined consistent with pensionable service as recognized by the New Jersey Police and Fire Pension statute and regulations.

The County urges denial of this proposal.

The PBA supports its proposal by the submission of many law enforcement agreements that contain a longevity program. According to the PBA, the labor agreements in its field of comparables reflect longevity payments at maximum value averaging \$6,796 by not receiving this benefit. The PBA asserts that its overall compensation for Sheriff's Officers is diminished in relative terms. The County's opposition is based upon the fact that this benefit was eliminated over thirty years ago, the estimated \$1.5 million impact of the proposal and, if awarded, its likely extension the hundreds of additional employees in its other law enforcement units. The County also points out that the PBA receives benefits such as an education allowance not uniformly received in County Sheriff's Officer agreements.

The longevity program in Essex County has been phased out in all of its labor agreements. Where such benefits continued to exist in other units, such benefits were terminated during the last negotiations for new employees. To recreate this benefit at this time would run counter to the existing county-wide program. Accordingly, this proposal is denied. The denial of the PBA proposal is not meant to terminate the longevity benefit that County Police Officers continue to receive due to having been grandfathered at the time of its merger into the Office of the Sheriff. That benefit will continue except for new County Police Officers who were hired after December 31, 2005 pursuant to the parties' agreement.

#### WORK SCHEDULE

The County proposes the implementation of a 24/7 work schedule effective upon the date of the Award. The PBA seeks rejection of the proposal.

Article VI, Section 2 provides for a normal work week of eight hours a day inclusive of a one hour lunch period in a normal work week of forty (40) hours. The Agreement is silent on the work schedule with respect to scheduling weekend hours except for Section 3 that provides compensation for employees who work a weekend assignment. Section 3 states:

Section 3. Any Employee who works a weekend assignment shall receive one day off in the following week plus one-half day's pay for each day worked, or time and one-half in pay for each day worked, at the discretion of the Sheriff.

Extensive testimony was received at hearing in support of the County's proposal and in support of rejection of that proposal: Chief Dough testified that the proposed change would not impact personnel in the courts, administrative and internal affairs divisions. Thus, the change would impact upon a minority of employees in the unit. The rationale for being able to deploy Sheriff's Officers on a 24/7 schedule is not, in the abstract, unreasonable, especially given the evidence and arguments advanced by the PBA contending that the Sheriff's Office is a full service law enforcement agency. However, the proposal has only been offered in general terms. This has caused speculation, not fully responded to by County witnesses, as to how this authority would actually be implemented and administered and whether such plan would have merit. It is apparent that there has been little direct communication between the parties over the merits of this proposal. The authority granted to management through the utilization of a 24/7 work schedule represents a significant change. There is merit to the PBA's opposition to granting such general authority in the absence of specifics as to how this authority would be implemented and administered. For these reasons, I deny the County's proposal and award the formation of a joint scheduling committee. I recognize that the results of any such committee could vary. From the most positive point of view, understandings could be reached concerning revisions to the existing schedule or any compensation-related issues that may arise from any change.

Accordingly, and based upon all of the above, I respectfully enter the terms of the Award.

### AWARD

1. All proposals by the City and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this award or otherwise agreed to by the parties.

2. Duration

The effective date of this Agreement shall be January 1, 2006 through December 31, 2007.

3. Article VIII – Holidays

Section 6 of this Article shall be changed to read as follows:

In the event an employee covered by this agreement is required to work on a legal holiday or a day declared to be a holiday by the Board of Chosen Freeholders of the County of Essex or the Governor, the employee shall be paid an extra day's pay for each holiday worked. Payments shall be made within thirty (30) days of the holiday worked.

4. Hospitalization, Medical, Surgical And Major Medical Insurance

Effective as soon as is administratively feasible, Article 10, Section 2 shall be modified as follows:

Prescription co-pay shall be increased to \$10 for generic drugs and \$25 for name brand and non-generic drugs. The mail order program shall remain in effect.

5. New Provision - Section 125 Cafeteria Plan

The County shall have the authority to implement a new provision that would allow unit employees to participate in its Section 125 Cafeteria Plan.

6. Article XXV – Development Fund

The annual contribution to the fund shall be increased by \$100 effective January 1, 2007. The new contribution shall be \$350.

7. Work Schedule

I award the formation of a joint scheduling committee to meet and discuss the feasibility of any proposed change to the existing work schedule, including its implementation and administration and any compensation related issues.

8. Education Benefits

Effective January 1, 2007, the Education Benefits provision shall be modified by increasing the 30 credit level by \$85.00, the 60 credit level by \$169.00 and by creating a Bachelor's degree level at \$5,250.00.

Employees covered by this Agreement shall be eligible for the same benefits for additional education credits received in accordance with the program established for Correction Officers. Such benefits shall be frozen at the current level of Three Thousand Five Hundred (\$3,500.00) dollars per year for a full increment (for sixty (60) completed credits) and One Thousand Seven Hundred Fifty (\$1,750.00) dollars per year for a half ( $\frac{1}{2}$ ) increment (for thirty (30) completed credits). An employee who holds or achieves a Bachelor's degree at an accredited institution shall receive Five Thousand Two Hundred Fifty (\$5,250.00) dollars. The current practice regarding payment procedure shall continue. These payments are effective January 1, 2007.

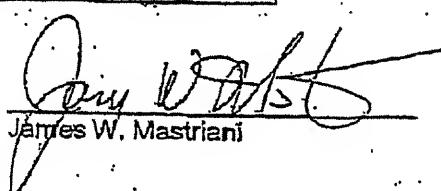
9. Salary

The following salary schedule shall be implemented retroactive to the effective dates and applicable to unit employees on payroll at the time of

the effective dates, to those who have retired and to those who may have  
retired on ordinary or disability pension to the date of retirement,

	4.0% January 1, 2006	4.0% January 1, 2007
Start	\$39,984	\$41,584
Step 1	\$45,219	\$47,027
Step 2	\$50,451	\$52,470
Step 3	\$55,685	\$57,913
Step 4	\$60,921	\$63,358
Step 5	\$66,152	\$68,798
Step 6	\$71,382	\$74,238

Dated: November 20, 2007  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey }  
County of Monmouth }ss:

On this 20<sup>th</sup> day of November, 2007, before me personally came and  
appeared James W. Mastriani to me known and known to me to be the individual  
described in and who executed the foregoing instrument and he acknowledged to  
me that he executed same.



GRETCHEN L. BOOSE  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expired 8/13/2008

K-11-0586  
9-7-11

MEMORANDUM OF AGREEMENT  
BETWEEN THE COUNTY OF ESSEX, THE ESSEX COUNTY SHERIFF,  
AND THE ESSEX COUNTY SHERIFF'S OFFICERS  
PBA LOCAL NO. 183

The County of Essex and the Essex County Sheriff, (the "County") and the Essex County Sheriff's Officers, PBA Local No. 183 (the "Association"), having engaged in collective negotiations, hereby mutually agree as follows with respect to modification of the terms of I.A. Docket No. 2006-052 which expired on December 31, 2007.

1. The terms of the 2002-2005 Collective Bargaining Agreement between the parties, as well as, I.A. Docket Nos. 2006-052 and 2008-098, shall remain in full force and effect except as herein modified.

2. Term of Agreement

The term of the new Agreement shall be for a period of three (3) years, effective January 1, 2008 through December 31, 2010.

3. Wages

Wage shall be increased as follows:

Effective January 1, 2008	2.85%
Effective September 1, 2009	2.75%
Effective July 1, 2010	2.50%

Retroactive compensation due as a result of I.A. Docket No. 2008-098 shall be paid in a separate paycheck.

4. Overtime

Effective September 1, 2010, required appearances in court, during off-duty hours not contiguous to an employee's work time, shall be compensated at a minimum of two hours of overtime compensation.

Pa 123

5. Parking

The final contract shall include a reference to the existing practice of free parking, without any change or expansion in the existing benefit.

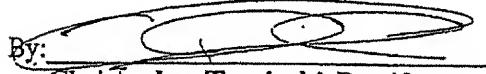
6. This Memorandum of Agreement, together with the 2002-2005 Collective Bargaining Agreement and I.A.Docket Nos. 2006-052 and 2008-098, represents the complete and final agreement between the parties, and is contingent upon ratification and approval of the association membership, the Sheriff, the Essex County Executive and the Essex County Board of Chosen Freeholders.

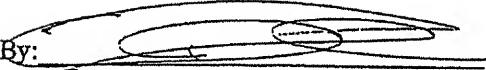
All proposals, whether written or oral, presented by the parties during the course of the negotiations are deemed withdrawn and not a part of this Agreement. This Agreement cannot be modified except by a writing signed by the parties.

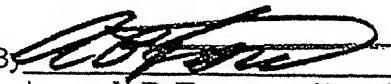
Pa124

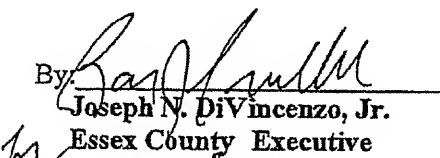
IN WITNESS WHEREOF, the parties have by their authorized representatives,  
set their hands and seals this 2<sup>nd</sup> day of Sept, 2011.

NEW JERSEY STATE PBA  
LOCAL 183

By:   
Christopher Tyminski, President

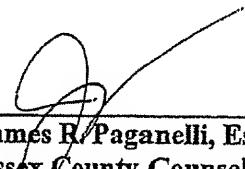
By:   
State Delegate

By:   
Armando B. Fontoura, Sheriff

By:   
Joseph N. DiVincenzo, Jr.  
Essex County Executive

ATTEST:  
By:   
Deborah Davis Ford, Clerk to  
Board of Chosen Freeholders

Approved as to Form

By:   
James R. Paganelli, Esq.  
Essex County Counsel

P125

A-11-0587  
9-7-11

MEMORANDUM OF AGREEMENT  
BETWEEN THE COUNTY OF ESSEX, THE ESSEX COUNTY SHERIFF,  
AND THE ESSEX COUNTY SHERIFF'S OFFICERS  
PBA LOCAL NO. 183

The County of Essex and the Essex County Sheriff, (the "County") and the Essex County Sheriff's Officers, PBA Local No. 183 (the "Association"), having engaged in collective negotiations, hereby mutually agree as follows with respect to modification of the terms of the Memorandum of Agreement which expired on December 31, 2010.

1. The terms of the 2002-2005 Collective Bargaining Agreement between the parties, I.A. Docket Nos. 2006-052 and 2008-098 and the 2008-2010 Memorandum of Agreement between the parties shall remain in full force and effect except as herein modified.
2. Term of Agreement

The term of the new Agreement shall be for a period of three (3) years, effective January 1, 2011 through December 31, 2013.

3. Wages

Wage shall be increased as follows:

Effective January 1, 2011	2.00%
Effective January 1, 2012	2.00%
Effective January 1, 2013	2.00%

4. Effective July 1, 2011, Article 5 of the parties 2002-2005 Collective Bargaining Agreement shall be deleted.

Pa 126

5. Waiver/Opt-Out

Effective January 1, 2012 the County will implement a waiver program for health benefits insurance costs for active employees. The waiver program will consist of the following:

- a. Employees may waive family coverage to be capped at \$4,000 or 25% of the amount saved by the County, whichever is less.
- b. Employees may waive parent/child or husband/wife coverage to be capped at \$3,000 or 25% of the amount saved by the County, whichever is less.
- c. Employees may waive single coverage to be capped at \$2,000 or 25% of the amount saved by the County, whichever is less.
- d. In order to be eligible for the waiver, the employee must be enrolled in other health care coverage and provide the County proof of creditable coverage.
- e. If an employee continues to receive prescription coverage from the County, the employee must pay the applicable amount as set forth by legislation.
- f. An employee who waives coverage shall be permitted to resume coverage under the same terms and conditions as apply to initial coverage if the employee ceases to be covered through the employee's spouse for any reason, including, but not limited to, the retirement or death of the spouse or divorce. An employee who resumes coverage shall repay, on a pro rata basis, any amount received which represents an advance payment for a period of time during which coverage is resumed. An employee who wishes to resume coverage shall file a declaration with the County, in such form as the County shall prescribe, that the waiver is revoked. The decision of the County to allow its employees to waive coverage and the amount of consideration to be paid therefore shall not be subject to the collective bargaining process.

6. Each employee on the payroll as of October 15, 2011 shall receive a one time bonus of three hundred and fifty dollars (\$350.00) which shall not be added to base pay.

7. Effective January 1, 2012, after adjusting for the 2% increase in base pay, each employee's base pay will be increased by an additional \$700. In exchange for the foregoing, the Association acknowledges and agrees that criminal identification duties at the Essex County Jail are not "unit work" for the Association and disclaims any right to perform criminal identification duties at the Essex County Jail. The Association further agrees to withdraw, with prejudice, the unfair practice charge under docket number CO-2011-212 and Superior Court action under docket number ESX-L-3874-11. The Association agrees to release any and all proceedings, lawsuits, grievances, arbitrations or other actions in any other forum related to the claims contained in CO-2011-212 or ESX-L-3874-11 and further agrees not to bring any additional proceedings, lawsuits, grievances, arbitrations or other actions in any forum related to the claims contained in CO-2011-212 or ESX-L-3874-11. The County will, upon withdrawal of CO-2011-212 and ESX-L-3874-11, withdraw with prejudice, its related appeal under docket number A-005861-10.
8. This Memorandum of Agreement, together with the 2002-2005 Collective Bargaining Agreement, I.A. Docket Nos. 2006-052 and 2008-098 and the 2008-2010 Memorandum of Agreement between the parties, represents the complete and final agreement between the parties, and is contingent upon ratification and approval of the association membership, the Sheriff, the Essex County Executive and the Essex County Board of Chosen Freeholders.

All proposals, whether written or oral, presented by the parties during the course of the negotiations are deemed withdrawn and not a part of this Agreement. This Agreement cannot be modified except by a writing signed by the parties.

Pa/28

7/2014-0045

**MEMORANDUM OF AGREEMENT**  
**BETWEEN THE COUNTY OF ESSEX, THE COUNTY SHERIFF,**  
**AND THE ESSEX COUNTY SHERIFF'S OFFICERS,**  
**PBA LOCAL 183**

The County of Essex and the Essex County Sheriff, (the "County") and the Essex County Sheriff's Officers, PBA Local No. 183 (the "Association"), having engaged in collective negotiations, hereby mutually agree as follows with respect to modification of the terms of Memorandum of Agreement which expired on December 31, 2013.

1. The terms of the 2002-2005 Collective Bargaining Agreement between the parties, I.A. Docket Nos. 2006-052 and 2008-098, and the 2008-2010 and 2011 – 2013 Memorandums of Agreement between the parties shall remain in full force and effect except as herein modified.

2. **Term of Agreement:**

A term of the new Agreement shall be for a period of four (4) years, effective January 1, 2014 through December 31, 2017.

3. **Wages:**

Wage shall be increased as follows:

Effective January 1, 2014	2.00%
Effective January 1, 2015	2.00%
Effective January 1, 2016	2.00%
Effective January 1, 2017	2.00%

Step movement shall continue per past practice during the life of this Agreement.

4. **Health Benefits:**

Employees may select any health plan offered by the County. Employees hired after the full execution of this agreement shall not be eligible for Traditional coverage.

Pa 129

5. Health Benefits

Revise to provide:

"Employees shall contribute amounts as set forth by Chapter 78, P.L. 2011. Once full implementation is reached, the contributions shall remain at the maximum level of contribution set forth in Chapter 78, P.L. 2011 for the remainder of this Collective Negotiations Agreement, through December 31, 2017."

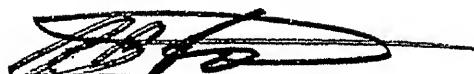
6. This Memorandum of Agreement, together with the 2002-2005 Collective Bargaining Agreement, I.A. Docket Nos. 2006-052 and 2008-098, the 2008-2010 and the 2011-2013 Memorandums of Agreement between the parties, represents the complete and final agreement between the parties, and is contingent upon ratification and approval of the association membership, the Sheriff, the Essex County Executive and the Essex County Board of Chosen Freeholders.
7. All proposals, whether written or oral, presented by the parties during the course of the negotiations are deemed withdrawn and not a part of this Agreement. This Agreement cannot be modified except by a writing signed by the parties.

IN WITNESS WHEREOF, the parties have by their authorized  
representatives, set their hands and seals this                    day                    2014.

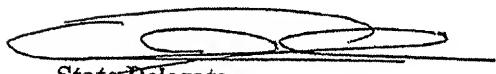
New Jersey State PBA  
Local 183



Chris Tyminski  
President  
New Jersey State PBA Local 183

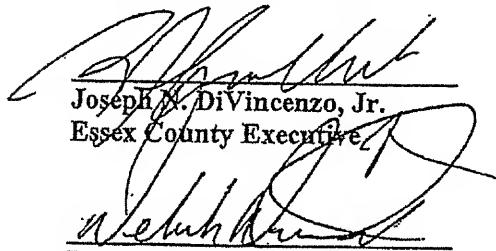


Armando B. Fontoura  
Sheriff

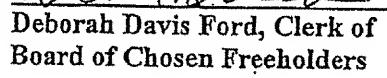


State Delegate

For the County of Essex

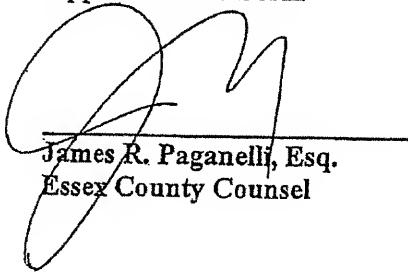


Joseph R. DiVincenzo, Jr.  
Essex County Executive



Deborah Davis Ford, Clerk of  
Board of Chosen Freeholders

Approved as to Form



James R. Paganelli, Esq.  
Essex County Counsel

Dolores MOA PBA 183

Pa131

# Preliminary Notice of Disciplinary Action (31-A)

## Civil Service Commission - State of New Jersey

**Instructions for Employer:** This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated: (a) suspension or fine for more than five working days at any one time; (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more; (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year; (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (e) removal; or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

<b>FROM:</b>	Employing Agency Name <b>E.C. Sheriff's Office</b>	Address/Phone Number <b>Veterans Courthouse, Newark, NJ 07102</b>	Date <b>09/30/2015</b>
<b>TO:</b>	Attorney representing your agency should this matter be appealed <b>Kecia M. Clarke, Assistant County Counsel</b>		
Employee Name <b>John Warnock</b>		Permanent Civil Service Title <b>Investigator</b>	Employee Identification Number <b>16936</b>
Address/Phone Number <b>410 2nd Avenue West, Newark, NJ 07107-1872</b>		Pension Number <b>0091984</b>	

You are hereby notified that the following charge(s) have been made against you: (If necessary, use additional sheets and attach)

Charges:	Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:
----------	---

If checked, charges are continued on attached page.  If checked, incidents are continued on attached page.

You are hereby suspended effective: 07/18/2013

(Check box to indicate if employee is suspended pending final disposition of this matter)

A departmental hearing will be held on 10/21/2015 at (time) 10:00 am  
at Hall of Records, Rm. 528, Newark, NJ

\* Must be a minimum of five days.

The following disciplinary action may be taken against you:

- Suspension for \_\_\_\_\_ working days.
- Indefinite suspension pending criminal charges effective (date): \_\_\_\_\_.
- Removal.
- Demotion to position of \_\_\_\_\_.
- Resignation not in good standing.  Other Disciplinary Action.
- Fine \$ \_\_\_\_\_ which is equal to \_\_\_\_\_ (number of working days)

Appointing authority or authorized agent's signature and title.

Signature

Title CAPTAIN

This form must be personally served on the employee or sent by certified or registered mail.

Certified or Registered Mail

Receipt Number 7015 1520 0003 5480 8076

Signature of Server

Date of personal service

DPF-31A Distribution: White: (Employee), Blue: (Division), Green: (Representative), Canary: (County Counsel), Pink: (Human Resources), Goldenrod: (CSC)  
Revised 5-24-11 When using a form downloaded from the Internet you still must provide the indicated above number of copies to all parties.

Merrick Limsky, Esq.

Pa 132

## PRELIMINARY NOTICE OF DISCIPLINARY ACTION

JOHN WARNOCK

SEPTEMBER 30, 2015

CHARGES: N.J.A.C. 4A:2-2.2;

N.J.A.C. 4A:2-2.3(a)(1) – Incompetency, inefficiency or failure to perform duties  
N.J.A.C. 4A:2-2.3(a)(5) – Conviction of a crime  
N.J.A.C. 4A:2-2.3(a)(6) – Conduct unbecoming a public employee  
N.J.A.C. 4A:2-2.3(a)(7) – Neglect of duty  
ECSO R.R. 3:1.1 – Conduct in public and private  
ECSO R.R. 3:1.10 – Conduct prejudicial to good order  
ECSO R.R. 3:1.11 – Professional image  
ECSO R.R. 8.2 – Duty responsibilities  
ECSO R.R. 8:2.1 Responsibility for own actions  
ECSO R.R. 8:2.6 – Report of unusual incidents

SPECIFICATIONS:

On July 18, 2013, this employee, an Investigator with the Essex County Sheriff's Department was indicted under docket number 13-07-00130 on the following charges: 2<sup>nd</sup> Degree Official Misconduct; 3<sup>rd</sup> Degree Criminal Restraint; 3<sup>rd</sup> Degree Criminal Coercion; 3<sup>rd</sup> Degree Terroristic Threats.

On October 2, 2014, Hudson County Jury found employee Investigator Warnock guilty of Harassment and not guilty of all other charges.

Our investigation reveals that Warnock did in fact have Ms. Ruiz in his car – a claim Warnock denies. The allegations are sustained and there is sufficient evidence to prove the allegation of his taking police action and failing to follow through thus neglecting to ensure the safety of Ms. Ruiz.

As a result of the above violations set forth above, combined with the guilty harassment verdict, employee's removal is necessary to maintain the efficient operation of the Essex County Sheriff's Department.

Pa 133

**Final Notice of Disciplinary Action (31-B)**  
**Civil Service Commission – State of New Jersey**

**Instructions for employer:** This notice must be served on a permanent employee or an employee serving a working test period in the career service after a Departmental hearing (if one is requested) if one of the following types of disciplinary actions is taken: (a) suspension or fine for more than five working days at any one time; (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more; (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year; (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (e) removal; or (f) resignation not in good standing. If the employee does not request or does not appear at the Departmental hearing, this notice must be served as the final action. A copy of this notice must be sent to the Civil Service Commission and served on the employee by personal service or by certified or registered mail.

<b>FROM</b>	Employing Agency Name <b>Essex County Sheriff's Office</b>	Address Phone Number	Veterans Courthouse, Newark, NJ 07102 973-621-4105	Date JANUARY 22, 2016
<b>TO</b>	Attorney representing your agency should this matter be appealed <b>Kecia M. Clarke, Assistant County Counsel</b>		Address/Phone number/Email address Office of County Counsel Hall of Records, Rm. 535 Newark, NJ 07102	973-621-2045
	Employee Name <b>John Warnock</b>	Permanent Civil Service Title Investigator	Employee Identification Number <b>16936</b>	
	Address/ Phone Number <b>410 2<sup>nd</sup> Avenue West, Newark, NJ 07107-1872</b>		Pension Number <b>0091984</b>	

On 09/30/15 you were served with a Preliminary Notice of Disciplinary Action (31A) and notified of the pending disciplinary action.

You requested a hearing which was held on 11/23/2015       You did not request a hearing  
 You requested a hearing and did not appear at the designated time and place [ ] A hearing was not held.

Sustained Charges:	Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:  <b>Charges withdrawn as outlined in the Preliminary Notice of Disciplinary Action dated September 30, 2015.</b>
	<input type="checkbox"/> If checked, charges are continued on attached page.
	<input type="checkbox"/> If checked, incidents are continued on attached page.

The following disciplinary action has been taken against you:

Suspension for \_\_\_\_\_ working days, beginning \_\_\_\_\_ and ending \_\_\_\_\_  
 Indefinite suspension pending criminal charges effective (date) \_\_\_\_\_  
 Removal, effective (date) \_\_\_\_\_  
 Demotion to position of \_\_\_\_\_ effective (date) \_\_\_\_\_  
 Resignation not in good standing, effective (date) \_\_\_\_\_       Other Disciplinary Action  
 Fine \_\_\_\_\_ which is equal to \_\_\_\_\_ (number of working days)  
 amount      number

Appointing authority or authorized agent's signature and title.

Signature \_\_\_\_\_ Title Captain

This form must be personally served on the employee or sent by certified or registered mail.

Certified or Registered Mail       Receipt Number 7015 1520 0003 5480 7765  
 Signature of Server \_\_\_\_\_       Date of personal service \_\_\_\_\_

**APPEAL PROCEDURE TO THE EMPLOYEE:** You have the right to appeal within 20 days from receipt of this form. All appeals must include a copy of this form. Pursuant to P.L. 2010, c. 26, effective July 1, 2010 there is a \$20 fee for disciplinary appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c.156 (C.44:8-107 et seq.), P.L.1973, c. 256 (C.44:7-85 et seq.), or P.L.1997, c.38 (C.44:10-55 et seq.), and veterans as defined by N.J.S.A.11A:5-1 et seq. are exempt from this appeal fee. Appeals should be addressed to the Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312. Any appeal postmarked after the 20 days statutory time limit will be denied. We recommend sending your appeal by certified mail to prove your filing in the event of lost or misdirected mail. Do not give your appeal to your personnel office for forwarding to the Civil Service Commission.

For more information on the rules that govern Major Discipline and the appeals process, please visit our website at: [www.state.nj.us/csc](http://www.state.nj.us/csc).

Pa 134



## OFFICE OF THE SHERIFF

ARMANDO B. FONTOURA, SHERIFF

ESSEX COUNTY VETERAN'S COURTHOUSE

NEWARK, NEW JERSEY

[www.essexsheriff.com](http://www.essexsheriff.com)

UNDERSHERIFFS  
JESUS PADILLA  
JAMES PITTS  
KEVIN RYAN

CHIEF  
JOHN D. DOUGH

February 3, 2016

John Warnock  
86 Mount Prospect Avenue  
Belleville, NJ 07109

Dear Mr. Warnock:

Your services as an Investigator with the Essex County Sheriff's Office are no longer required. We thank you for your dedication and years of service. Your position has been terminated effective July 18, 2013.

Sincerely,



Armando B. Fontoura, Sheriff  
Essex County Sheriff's Office

Pa135

## COUNTY OF ESSEX

## GRIEVANCE PROCEDURE FORM

NOTE: Every section must  
be completed on this formDO NOT WRITE IN  
THIS SPACE  
(For Office Use Only)

Received By:

Agency, Division, Institution

NOTE: THIS FORM MUST BE FILED WITH YOUR DIVISION HEAD

## SUBMITTED BY:

Name of Employee KRUG Matthew On Behalf Of Sheriff's  
 Investigator John Warnock  
(Last, First, Middle Initial)

Department Essex Sheriff

Title PBA Local 183  
 President

Division  
 Institute  
 or Agency Essex County

DATE OF GRIEVANCE: SUBJECT OF GRIEVANCE:  NON-CONTRACTUAL  CONTRACTUAL  
*If grievance is contractual, state article and paragraph of contract which you claim has been violated: Grievance of termination of INV. John Warnock without establishing just cause.*

Employee's Statement of Grievance (attach additional papers if necessary)  
 John Warnock was terminated without proper notice or cause. This action was done retroactively back almost 2 years, this action creates a severe financial hardship.

To Correct My Grievance The Following Should Be Done  
 Inv. John Warnock should be immediately returned to full work status. Additionally, a policy/guidelines should be established to avoid these incidents in the future.

 I WILL REPRESENT MYSELF ( OR ) MY REPRESENTATIVE WILL BE:

Name Merick H. Limsky, Esq

Title PBA Attorney- Limsky Mitolo  
 Attorneys at Law  
 224 Johnson Avenue, 2<sup>nd</sup> FL  
 Hackensack, NJ 07601

Employee Organization or Law Firm (if any) \_\_\_\_\_

• SIGNATURE OF EMPLOYEE

DATE 03/04/16

ANSWER BY DIVISION HEAD

Pa 136

COUNTY OF ESSEX GRIEVANCE PROCEDURE FORM (Continued from other side)

<input type="checkbox"/> I APPEAL DECISION AND REQUEST STEP 2 HEARING	DATE OF APPEAL	Appeal Received by Dept. Head	Date Received
---	----------------	-------------------------------	---------------

Employee's Representation for Step 2 Hearing:  
Name \_\_\_\_\_

Title \_\_\_\_\_

Employee Organization or Law Firm (if any) \_\_\_\_\_

Answer by Department Head

Signature	<i>Department Head</i>	<i>(Date of Hearing)</i>	<i>(Date Decision Rendered)</i>
-----------	------------------------	--------------------------	---------------------------------

I acknowledge settlement of my grievance	SIGNATURE OF EMPLOYEE _____	DATE _____
--	-----------------------------	------------

<input type="checkbox"/> I APPEAL DECISION AND REQUEST ARBITRATION STEP 3	DATE OF APPEAL	APPEAL RECEIVED BY (FOR MANAGEMENT)	DATE RECEIVED
---	----------------	-------------------------------------	---------------

Employee's Representation for Step 3 Hearing

Name \_\_\_\_\_ Title \_\_\_\_\_

Employee Organization or Law Firm (if any) \_\_\_\_\_

Arbitrator's Decision

Pa137



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
PO Box 423  
TRENTON, NEW JERSEY 08625-0428

For Courier Delivery  
495 West State St.  
Trenton, NJ 08618

REQUEST FOR SUBMISSION OF  
A PANEL OF ARBITRATORS

Phone: 609-292-8888

[www.state.nj.us/perc](http://www.state.nj.us/perc)

<b>INSTRUCTIONS:</b> Type or print clearly. File an original and 4 copies of this request with the Commission, together with a copy of the arbitration provisions of the parties' agreement. If more space is required for any item, attach additional sheets, numbering items accordingly. If filing by facsimile transmission, the multiple copies requirement is waived. See N.J.A.C. 19:10-2.3		<b>DO NOT WRITE IN THIS SPACE</b> DOCKET NO. <i>JAR-2016-724</i> DATE FILED: <i>6/28/16</i>	
As of the date of this request the public employer and the certified or recognized employee organization have failed to achieve an agreement concerning the grievance noted herein. It is requested that an arbitrator be appointed in accordance with the Commission's Rules and Regulations.			
<b>1. PUBLIC EMPLOYER</b>			
Full Name: <b>Essex County Sheriff</b>		County: <b>Essex</b>	
Name, Title and Address of Employer Representative to Contact: James R. Paganelli, County Counsel Office of County Counsel Hall of Records - Room 535 465 Dr. Martin Luther King, Jr., Boulevard Newark, NJ 07102		Name and Address of Attorney/Consultant Representing Public Employer (if any):	
Phone: (973) 621-5003	Fax:	Phone:	Fax:
E-Mail:		E-Mail:	
<b>2. EXCLUSIVE REPRESENTATIVE</b>			
Full Name: <b>Essex County Sheriff's Officers PBA Local No. 183</b>			
Name, Title and Address of Representative to Contact: Merrick H. Limsky, Esq. <b>LIMSKY MITOLO</b> 224 Johnson Ave., 2nd Fl. Hackensack, NJ 07601		Name and Address of Attorney/Consultant Representing Exclusive Representative (if any):	
Phone: (201) 488-5300	Fax: (201) 408-7947	Phone:	Fax:
E-Mail: <i>mlimsky@limskymitolo.com</i>		E-Mail:	
<b>3. IS THIS A JOINT REQUEST?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>4. STATEMENT IDENTIFYING GRIEVANCE(S) TO BE ARBITRATED:</b>			
Failure to Provide a Departmental Hearing for Inv. John Warnock in accordance with the collective bargaining agreement.			
<b>5. CERTIFICATION</b> (A copy of the arbitration provisions of the parties' agreement must accompany this request. N.J.A.C. 19:12-5.2)			
I (we) declare that I (we) have read the above request and that the information is true to the best of my (our) knowledge and belief.			
Essex County Sheriff's PBA Local No. 183			
Requesting Party and Affiliation, if Any By <i>Mark S. L. Attorney</i> (Signature of Representative) <i>(Title)</i>		Requesting Party and Affiliation, if Any By _____ (Signature of Representative) <i>(Title)</i>	
Date <i>Jun 28, 2016</i>		Date _____	

GERARD RESTAINO, LLC

ARBITRATOR ♦ MEDIATOR ♦ FACT-FINDER

ALTERNATIVE DISPUTE RESOLUTION

1346 THE HIDEOUT

LAKE ARIEL, PA 18436-9535

PHONE (570) 698-0585

FAX (570) 698-0587

ggestaino@hotmail.com

\*\*\*\*\*

NOTICE OF HEARING

SYLVIA HALL, ASSISTANT COUNTY COUNSEL  
OFFICE OF ESSEX COUNTY COUNSEL.  
HALL OF RECORDS  
465 DR. MARTIN LUTHER KING BLVD., ROOM 535.  
NEWARK, NJ 07102

MERICK LIMSKY, ESQ.  
LIMSKY MITOLO  
224 JOHNSON STREET, FL. 2  
HACKENSACK, NJ 07601

AGENCY: NJ PERC

RE: COUNTY OF ESSEX AND PBA 183  
DOCKET AR-2016-724

ISSUE: WARNOCK DISCIPLINARY HEARING

LOCATION: HALL OF RECORDS, ROOM 519

DATE: OCTOBER 28, 2016

TIME: 10:30 AM^

*Gerard G. Restaino*

\_\_\_\_\_  
Gerard G. Restaino

Dated: September 21, 2016

Dell 09/16

^ TRAVEL TIME IF NEEDED

Pa 139



## OFFICE OF THE COUNTY COUNSEL

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[www.essexcountynj.org](http://www.essexcountynj.org)

Joseph N. DiVincenzo, Jr.  
Essex County Executive

Courtney M. Gaccione  
Essex County Counsel

October 14, 2016

Via Certified Mail RRR and Facsimile (609) 777-0089

Daisy B. Barreto,  
Director of Conciliation and Arbitration  
State of New Jersey PERC  
P.O. Box 429  
Trenton, New Jersey 08625

Via Certified Mail RRR and Email

Gerard G. Restaino, Arbitrator  
Gerard Restaino, LLC  
1346 The Hideout  
Lake Ariel, PA 18436

Re: Essex County Sheriff's Office & PBA Local 183  
Docket No. AR-2016-724 Inv. Warnock Disciplinary Hearing  
Procedural Deficiency and Issues of Non-Arbitrability

Dear Ms. Barreto and Mr. Restaino:

The Office of the Essex County Counsel represents the Essex County Sheriff's Office ("ECSO") with respect to the aforementioned matter. The ECSO timely objects to arbitration on October 28, 2016 and respectfully requests a dismissal of the matter as the PBA's request for arbitration is untimely and procedurally defective. Additionally, the employee in question was a statutorily unclassified employee under N.J.S.A. 40A:9-117a and is therefore not entitled to either a departmental disciplinary hearing or a grievance arbitration hearing. Until a determination may be made regarding the procedural defect(s), ECSO respectfully and timely requests a stay of arbitration and an adjournment of the October 28, 2016 hearing at this juncture prior to incurring the time and expense regarding the preparation for arbitration and the expense of arbitration.

The PBA Failed to Timely File for Arbitration and a Condition Precedent has not been Satisfied.

Issues of procedural arbitrability entail whether required conditions for arbitration have been met. Amalgamated Transit Union, Local 880 v. New Jersey Transit Bus Operations, Inc., 200 N.J. 105, 116 (2009), *citing*, Standard Motor Freight v. Local Union No. 560 Int'l Bhd. of Teamsters, 49 N.J. 83, 97 (1967). Procedural arbitrability includes questions regarding "the timeliness of a demand for arbitration." Commerce Bank, N.A. v. DiMaria Const., Inc., 300 N.J. Super. 9, 14, (App. Div. 1997) *certif. denied*, 151 N.J. 73 (1997), *cert. denied*, 522 U.S. 1116 (1998), *citing*, Standard Motor Freight v. Local Union No. 560 Int'l Bhd. of Teamsters, 49 N.J. 83, 97 (1967). Whether procedural conditions have been met "is left for the arbitrator." Standard Motor Freight, *supra*, 49 N.J. at 97; see N.J.S.A. 2A:23B-6 ("an arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled").

Under the clear terms of the PBA's Collective Bargaining Agreement ("CBA"), a grievance must be filed in writing within thirty (30) days of the event causing the grievance, and the official must render a decision

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Ms. Barreto and Mr. Restaino

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in writing within 15 calendar days. The failure to respond in 15 calendar days is deemed to be a denial. (See PBA CBA, Article XI, Step 1, p. 21). (Cited excerpts of the CBA are attached hereto as "Exhibit A"). Pertinent to the analysis herein are the CBA's four conditions precedent, which must then be satisfied to request PERC arbitration of a grievance: (a) the request must be in writing to the State Board; (b) filed by the PBA; (c) filed "within twenty (20) calendar days of the response or time for response" by the appropriate official; and (d) the matter grieved must qualify as a contract grievance under section B.1 of Article XI of the CBA. (See "Exhibit A," Article XI, p. 21) (emphasis added).

Here, an insurmountable procedural defect exists as the request for arbitration is untimely. Because the grievance is dated **March 4, 2016** (attached hereto as "Exhibit B"), under the plain language of the CBA, the expected date for a response from the Sheriff was 15 days later, by **March 21, 2016** (as March 19<sup>th</sup> fell on a weekend). No response from the Sheriff was issued and under Article XI(D)(1)(d) of the CBA, there was an operational denial of the grievance by March 21, 2016. Thus, the request for arbitration needed to be filed "within twenty (20) calendar days" by **April 11, 2016**. However, the date of the request for arbitration is **June 28, 2016** nearly 80 days after the filing deadline and more than 95 days after the right arose. (The request for arbitration is attached hereto as "Exhibit C"). The CBA's time limitation is subject to strict interpretation by PERC and/or the Arbitrator as arbitration may only be requested if and "only if each and every one of the conditions [precedent] is met." ("Exhibit A," Article XI, p. 21)(emphasis added). Further, the 20-day deadline is not relaxed due to the CBA's merger clause: "This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues, which were the subject of negotiations." ("Exhibit A," Article XXII (1), p. 37) (emphasis added). Clearly the 20-day deadline was not met, and the case is non-arbitrable due to failure of a condition precedent. On this point alone, this case should be dismissed.

A Condition Precedent under Statute also has not been met Rendering the case Non-Arbitrable.

With respect to non-civil service law enforcement officers, pursuant to N.J.A.C. 19:12-6.1 ("Chapter 6"), arbitration is not available for police officers who are terminated based on a complaint or charges issued for disciplinary reasons involving any alleged violation of criminal law. Additionally, under Chapter 6, "[a]n appeal of the termination of a non-civil service law enforcement officer . . . shall be filed within 20 days after a notice of termination. N.J.A.C. 19:12-6.3 (emphasis added). Even if Chapter 6 were to apply, the request for arbitration is precluded as the June 28, 2016 request for arbitration is more than 120 days after the February 3, 2016 notice of termination. The PBA's request for arbitration must fail for want of timeliness.

The PBA has failed to Sufficiently Allege a Contract Grievance.

A second condition precedent for arbitration has not been satisfied. The grievance must qualify as a contract grievance within Section B.1 of the CBA. ("Exhibit A," p. 21). Section B.1 defines "grievance" as "a misinterpretation, misapplication or violation of the terms of [the CBA] which is subject to the grievance procedure outlined herein and shall hereinafter be referred to as a 'contract grievance' and shall include disciplinary action." ("Exhibit A," pgs. 20-21). Here, there has been no misinterpretation of the CBA as the CBA fails to include disciplinary actions. Furthermore, the preemptive nature of N.J.S.A. 40A:9-117a trumps, making the termination of a sheriff's investigator non-arbitrable. See Mercer County Sheriff's Office v. PBA Local 187, 40 NJPER 89 (PERC 2013). Pursuant to N.J.S.A. 40A:9-117a, sheriff's investigators "serve at the pleasure of the sheriff making their appointment and shall be included in the unclassified service of the civil

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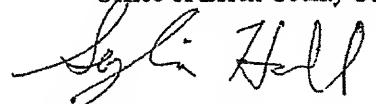
\* \* \* \*  
Exhibits  
Omitted

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service." (Emphasis added). Therefore, Investigator Warnock is not entitled to the hearing on October 28, 2016 as arbitration is statutorily preempted.

Essex County has demonstrated good cause to request a dismissal and, until that time, an adjournment of the arbitration until these procedural issues may be decided.

Very truly yours,  
Office of Essex County Counsel



Sylvia Hall, Assistant County Counsel  
(973) 621-2701

Enclosures

cc: Merick H. Limsky, Esq. (w/enc. via email)

**GERARD RESTAINO, LLC**

ARBITRATOR ♦ MEDIATOR ♦ FACT-FINDER

ALTERNATIVE DISPUTE RESOLUTION

1346 THE HIDEOUT

LAKE ARIEL, PA 18436-9535

[grestaino@hotmail.com](mailto:grestaino@hotmail.com)

(570) 698-0585

FAX (570) 698-0587

CELL (732)-887-3398

October 14, 2016

Via email only

Sylvia Hall, Esq.  
Assistant Essex County Counsel  
Office of County Counsel  
465 Dr. Martin Luther King Boulevard  
Hall of Records, Room 535  
Newark, NJ 07102

Merick Limsky, Esq.  
Limsky Mitolo  
224 Johnson Avenue, 2<sup>nd</sup> floor  
Hackensack, NJ 07601

Re: Essex County Sheriff's Office  
and  
PBA 183  
PERC Docket AR-2016-724  
Warnock Disciplinary Hearing

Dear Counselors:

The matter assigned to me alleges that the County of Essex (County) did not provide Investigator John Warnock a Departmental Hearing in accordance with the collective negotiations agreement (CNA) between the parties. As we all know, arbitration is divided into substantive and procedural arbitrability.

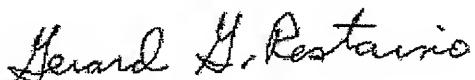
The courts have consistently determined that substantive arbitrability is to be determined by the courts and procedural arbitrability is to be determined by an arbitrator. In the instant matter the County contends that the PBA's claim is

procedurally defective and the claim should be dismissed. Furthermore, the County argues that N.J.S.A. 40A:9-117A renders the instant matter non-arbitrable.

I have no authority to determine the substantive issue presented by the County i.e., a statutory mechanism exists that prevents this matter from proceeding to arbitration. The forum for that is with NJ PERC, but not with Ms. Daisy Barreto.

The timeliness issue raised by the County is certainly a matter for an arbitrator to determine. Accordingly, unless this matter is enjoined we will proceed to a hearing on October 28, 2016, with the limited issue (see request for arbitration panel submitted by Mr. Limsky) of the County failing to provide Investigator Warnock a Departmental Hearing.

Very truly yours,



Gerard G. Restaino  
GGR:jk



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
PO Box 429  
TRENTON, NEW JERSEY 08625-0429  
**PETITION FOR SCOPE OF NEGOTIATIONS**  
**DETERMINATION**  
[www.state.nj.us/perc](http://www.state.nj.us/perc)

For Courier Delivery  
495 West State St.  
Trenton, NJ 08618

Phone: 609-292-9830

Fax: 609-777-0089

<b>INSTRUCTIONS:</b> Please type or print clearly. File an original and 9 copies of this petition with the Public Employment Relations Commission, together with proof of the service of a copy of the petition on the other party to the collective negotiations relationship. If filing by facsimile transmission, the multiple copies requirement is waived. See N.J.A.C. 19:10-2.3.		<b>DO NOT WRITE IN THIS SPACE</b>	
		DOCKET NO.	
		DATE FILED:	
<b>1. PUBLIC EMPLOYER</b>			
Full Name: <b>County of Essex, Sheriff of Essex County</b>		County: <b>Essex</b>	
Name, Title and Address of Employer Representative to Contact: <b>Sylvia Hall, Assistant County Counsel Hall of Records - Room 535 465 Dr. Martin Luther King, Jr. Boulevard Newark, New Jersey 07102</b>		Name and Address of Attorney/Consultant Representing Public Employer (if any):	
Phone: (973) 621-2701	Fax: (973) 621-4599	Phone:	Fax:
E-Mail: shall@counsel.essexcountynj.org		E-Mail:	
<b>2. PUBLIC EMPLOYEE REPRESENTATIVE</b>			
Full Name: <b>Essex County Sheriff's Officers PBA Local No. 183</b>		Name and Address of Attorney/Consultant Representing Exclusive Representative (if any):	
Name, Title and Address of Representative to Contact: <b>Merick H. Limsky, Esq. Limsky Mitolo 224 Johnson Avenue, 2nd Floor Hackensack, New Jersey 07601 Attorneys for Essex County Sheriff's Office PBA Local No. 183</b>			
Phone: (201) 488-5300	Fax: (201) 408-7947	Phone:	Fax:
E-Mail: mlimsky@limskymitolo.com		E-Mail:	
<b>3. COLLECTIVE NEGOTIATIONS UNIT</b>			
Description: <b>Essex County Sheriff's Officers PBA Local No. 183</b>		Approximate number of employees in unit: <b>330 of this number, approx. 38 are sheriff's Invs.</b>	
Term of current contract, if any. If none, so state. _____ (Month, Day, Year)		Jan 1, 2014 (Month, Day, Year)	Dec 31, 2017 (Month, Day, Year)
<b>4. STATEMENT OF DISPUTE</b> <i>(Provide a clear and concise statement of the matter(s) in dispute and any other relevant information. Use additional sheets if necessary.)</i>			
Pursuant to the New Jersey Employer-Employee Relations Act, as amended, the Public Employment Relations Commission is requested to make a determination as to whether the following matter(s) is (are) within the scope of collective negotiations.			
County of Essex respectfully requests that PERC immediately enjoin and restrain October 28, 2016 grievance arbitration in Docket No. AR-2016-724 on the merits due to non-arbitrability. The subject matter of the dispute is not within the scope of the Collective Bargaining Agreement (CBA). Additionally, the Essex County Sheriff, a Constitutional Officer, may terminate an at-will, unclassified Sheriff's Investigator pursuant to N.J.S.A. 40A:9-117a without either a departmental disciplinary hearing or a grievance arbitration hearing due to: (1) the preemptive nature of N.J.S.A. 40A:9-117a and (2) the instant CBA.			
Moreover, the grievance does not qualify for PERC arbitration under N.J.A.C. 19:12-6.1 or N.J.S.A. 40A:14-209, further rendering the grievance non-arbitrable.			
(Continued on back)		<b>Po145</b>	

**4. STATEMENT OF DISPUTE (continued)**

The issues of procedural non-arbitrability are before the Arbitrator in this matter. Essex County seeks a restraint on arbitration (to the extent the grievance on behalf of the Sheriff's Investigator asserts an alleged right to a departmental disciplinary hearing on termination), pending a decision on the issues raised herein.

**The dispute has arisen (check one):**

During the course of collective negotiations and one party seeks to negotiate with respect to a matter that the other party contends is not a required subject for collective negotiations.

During the course of compulsory interest arbitration proceedings and one party seeks to have the arbitrator consider a proposal that the other party contends is not a required subject of negotiations.

Please review the requirements outlined in the Pilot Program Notice on the PERC website regarding filing a Scope of Negotiations Petition.

With respect to the negotiability and legal arbitrability of a matter sought to be submitted to binding arbitration pursuant to a collectively negotiated grievance procedure.

With respect to the legal arbitrability of a dispute as to whether the withholding of an increment of a teaching staff member is disciplinary or predominately relates to the evaluation of a teaching staff member's teaching performance.

Otherwise (explain the circumstances): \_\_\_\_\_

**5. CHECK ALL PETITIONS FILED RECENTLY OR SIMULTANEOUSLY WITH THIS PETITION (Indicate date(s) filed and docket number(s) assigned, if available)**

<input type="checkbox"/>	Petition to Initiate Compulsory Interest Arbitration Docket No. _____ Date Filed: _____	<input checked="" type="checkbox"/> Request for Submission of Panel of Arbitrators Docket No. AR-2016-724 Date Filed: Jun 28, 2016
<input type="checkbox"/>	Notice of Impasse Docket No. _____ Date Filed: _____	<input type="checkbox"/> Unfair Practice Charge Docket No. _____ Date Filed: _____
<input type="checkbox"/>	Representation Petition Docket No. _____ Date Filed: _____	<input type="checkbox"/> Petition for Issue Definition Determination Docket No. _____ Date Filed: _____
<input type="checkbox"/>	Petition for Contested Transfer Determination Docket No. _____ Date Filed: _____	<input type="checkbox"/> Other Scope of Negotiations Petition(s) Docket No. _____ Date Filed: _____
<input type="checkbox"/>	Related Filings at Other Administrative Agencies Docket No. _____ Date Filed: _____	<input type="checkbox"/> Other (explain) _____

**6. IS THIS A JOINT PETITION?  Yes  No****7. CERTIFICATION (If petition is joint, the signature of a representative of each party is required)**

I (We) declare that I (We) have read the above petition and that the statements are true to the best of my (our) knowledge and belief.

By Susan Hall, Assistant County Counsel,  
(Signature of Authorized Representative) Essex County (Title)

Date 10/20/16

By \_\_\_\_\_  
(Signature of Authorized Representative) \_\_\_\_\_  
(Title) \_\_\_\_\_

Date \_\_\_\_\_

**Sylvia Hall**

---

**From:** Gerard Restaino <ggrestaino@hotmail.com>  
**Sent:** Friday, October 21, 2016 10:03 AM  
**To:** Sylvia Hall  
**Cc:** Merick Limsky  
**Subject:** Re: AR-2016-724

Sylvia/Merrick, based upon the documents from the County and the Scope Petition that was filed, and in support of the arbitration process I will adjourn the hearing scheduled for October 28, 2016, at no cost to the parties. Sylvia, please inform PERC of my decision and both of you keep me in the loop.

Good luck to both parties.

Jerry Restaino

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**From:** Sylvia Hall <[shall@counsel.essexcountynj.org](mailto:shall@counsel.essexcountynj.org)>  
**Sent:** Friday, October 21, 2016 9:49 AM  
**To:** Gerard Restaino  
**Cc:** Merick Limsky  
**Subject:** AR-2016-724

Mr. Restaino:

As you may know, Essex County filed a Request for Scope of Negotiations regarding this matter (namely, the issue regarding the statutory mechanism in N.J.S.A. 40A:9-117a), and same has already been docketed by PERC as SN-2017-017, with a briefing schedule provided. Thus, I am writing to confirm that should the matter proceed on October 28, 2016 before you, it is my understanding that same will proceed only on the issue of procedural arbitrability, i.e., timeliness, as raised by the County in my letter of October 14, 2016 and as mentioned in your letter of the same date. It is my understanding that at this juncture, the case will not proceed on the merits as presented in the Union's request for arbitration, i.e., the failure to provide a departmental hearing as per the collective bargaining agreement. Thus, witness testimony and discovery on the merits is not required for October 28, 2016.

It is also my understanding that if we are still scheduled for October 28, 2016 you will decided procedural issues without charge to the parties. Kindly inform me at your earliest convenience if any of this information is incorrect.

Thank you for your attention to this.

Regards,

Sylvia Hall, Assistant County Counsel  
Office of the Essex County Counsel  
Hall of Records, Room 535  
465 Dr. Martin Luther King, Jr. Boulevard  
Newark, New Jersey 07102  
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